



1 APPEARANCES (continued):

2 MR. ARSHIA JAVAHERIAN  
3 160 North LaSalle Street, Suite C-800  
4 Chicago, Illinois 60601  
5 appearing for staff of the  
6 Illinois Commerce Commission  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17

18 SULLIVAN REPORTING COMPANY, by  
19 PATRICIA WESLEY  
20 License No. 084-002170  
21  
22

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22

I N D E X

Opening Statement	Page
MR. BOURKLAND	179
Witnesses	Direct Cross Redirect Recross Exmnr.
KEN BOURKLAND	210
THOMAS ADAMS	224 235 242
PAUL MICELI	245 255 259
MARK PRIMM	264 268 280
GREG ROCKROHR	273 277 282 290 290 288

E X H I B I T S

Complainant's	For Identification	In Evidence.
Nos. 1	209	209
2	209	209
3	209	209
4	209	209
Com Ed	For Identification	In Evidence.
Nos. 1	263	263
2	263	263
3	263	263
3(A)	263	263
4	272	272
JT	For Identification	In Evidence.
No. 1.0	276	276
Staff	For Identification	In Evidence.
No. 1.0	275	275

1	I N D E X	
2	Closing Argument	Page
3	Mr. Bourkland	292
	Mr. Goldstein	296
4	Rebuttal	
5	Mr. Bourkland	298
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		

1 JUDGE HAYNES: Pursuant to the direction of the  
2 Illinois Commerce Commission, I now call Docket  
3 06-0726. This is the complaint of Ken Bourkland  
4 versus Commonwealth Edison Company.

5 May I have appearances for the record,  
6 please. Your name and address.

7 MR. BOURKLAND: I'm Ken Bourkland. Address is  
8 6N347 Old Homestead Road, St. Charles, Illinois,  
9 60175.

10 JUDGE HAYNES: Okay.

11 MR. GOLDSTEIN: On behalf of Commonwealth Edison  
12 Company, Mark L. Goldstein, 108 Wilmot Road,  
13 Suite 330, Deerfield, 60015. My telephone number is  
14 847-580-5480.

15 MR. JAVAHERIAN: On behalf of staff witnesses of  
16 the Illinois Commerce Commission, Arshia Javaherian,  
17 160 North LaSalle, Suite C-800, Chicago, Illinois  
18 60601.

19 JUDGE HAYNES: Okay. We're here today for an  
20 evidentiary hearing. Are there any preliminary  
21 matters that we need to discuss?

22 MR. JAVAHERIAN: Your Honor, we do have a joint

1 stipulation between the staff and the company just  
2 to enter into some discovery into the record. Would  
3 you like for that to happen now or would you like  
4 that to happen when I introduce my witness?

5 JUDGE HAYNES: Is this something the complainant  
6 is aware of?

7 MR. JAVAHERIAN: He has received the discovery, I  
8 know that. I don't know if it was communicated to  
9 him that we were entering that into the record. I  
10 don't know if he has any objections to that.

11 JUDGE HAYNES: We can wait till you present your  
12 witnesses.

13 MR. JAVAHERIAN: Thank you.

14 JUDGE HAYNES: Mr. Bourkland, is it Bourkland or  
15 Bourkland?

16 MR. BOURKLAND: Bourkland.

17 JUDGE HAYNES: Okay. You will be proceeding  
18 first. You brought witnesses with you here today?

19 MR. BOURKLAND: Yes, I have.

20 JUDGE HAYNES: Who's going to testify first?

21 MR. BOURKLAND: I will present the case and then  
22 certain intervals I'll ask the witnesses to testify.

1 JUDGE HAYNES: Okay. Okay. You know what, why  
2 don't you identify who's here today and go ahead and  
3 swear all of the witnesses -- your witnesses in.

4 MR. BOURKLAND: Okay. Starting from my left,  
5 Mr. Howard Pfeffer P-f-e-f-f-e-r, an engineering  
6 consultant with the Fermi National Laboratory. On  
7 my right is first Mr. Forrest Muehlethaler --

8 MR. MUEHLETHALER: M-u-e-h-l-e-t-h-a-l-e-r.

9 MR. BOURKLAND: -- who is an affected property  
10 owner and a witness to the activities, and to his  
11 right is his wife Alice.

12 JUDGE HAYNES: Same last name?

13 MR. MUEHLETHALER: Same last name.

14 MRS. MUEHLETHALER: M-u-e-h-l-e-t-h-a-l-e-r.

15 JUDGE HAYNES: Okay. Please raise your right  
16 hand.

17 (Witness sworn.)

18 Thank you. Proceed.

19 KEN BOURKLAND,  
20 called as a witness herein, having been first duly  
21 sworn, was examined and testified as follows:

22

1 STATEMENT

2 BY

3 MR. BOURKLAND:

4 Okay. I'm first going to give a  
5 history of the activity regarding this case without  
6 dwelling too much on detail in the early years, but  
7 in 1990 on a summer afternoon --

8 MR. GOLDSTEIN: I'm going to object, your Honor.  
9 This is a matter I thought that dealt with the  
10 height of the lines across Mr. Bourkland's property  
11 as they exist today.

12 JUDGE HAYNES: I agree.

13 MR. GOLDSTEIN: If he's going to go into any  
14 detail about what occurred in 1990 or 1991, that is  
15 totally irrelevant and it's so far removed from what  
16 has actually happened in the last year or two that  
17 it's certainly irrelevant to the outcome of this  
18 proceeding.

19 JUDGE HAYNES: With that in mind, and that I  
20 agree, I'll allow you to -- I'll allow you to go  
21 forward; however, bear in mind that it is most  
22 likely irrelevant something that happened in 1990.



1 MR. BOURKLAND: I believe it is relevant and, as  
2 I said, I'll be brief about it, to get to the  
3 current issue, a squaller came through our area and  
4 dropped a limb on a utility line and dropped them  
5 near the ground but did not break them. That  
6 occurred approximately 1 to 2 in the afternoon on  
7 June 6.

8 MR. GOLDSTEIN: Of what year?

9 MR. BOURKLAND: 1990. And that report was called  
10 into Com Ed and nobody showed up for approximately  
11 12 hours. At 1:30 in the morning a tree-cutting  
12 crew --

13 MR. GOLDSTEIN: I will object. I don't mean to  
14 do this, but this is absolutely and totally  
15 irrelevant to --

16 MR. BOURKLAND: Objection.

17 MR. GOLDSTEIN: -- whether the lines are at a  
18 particular height as of this date in 2008.

19 What happened in 1990 and a line  
20 falling, it has certainly no relevance to the  
21 outcome of this proceeding.

22 JUDGE HAYNES: I understand. Mr. Bourkland, can

1 you explain how this would be relevant to the height  
2 of your lines?

3 MR. BOURKLAND: Because of the damage committed  
4 by their tree-cutting crew, we had negotiations with  
5 Com Ed and settled that out of court and they made a  
6 cash settlement --

7 MR. GOLDSTEIN: I'm going to object.

8 MR. BOURKLAND: -- to restore the damage they had  
9 done.

10 JUDGE HAYNES: One at a time.

11 MR. GOLDSTEIN: This has nothing to do --

12 JUDGE HAYNES: Let Mr. Bourkland finish  
13 explaining this. Okay. So you had a settlement  
14 when?

15 MR. BOURKLAND: In August of that same year.

16 JUDGE HAYNES: Okay.

17 MR. BOURKLAND: And through the agreement of  
18 Com Ed and myself, we chose a consultant from the  
19 Morton Arboretum which recommended a species of  
20 slow-growing and low habitat so as not to be into  
21 their power lines.

22 JUDGE HAYNES: I still don't -- I don't

1 understand perhaps what you are getting at. How's  
2 that relevant to --

3 MR. BOURKLAND: Okay. Please bear --

4 JUDGE HAYNES: Power lines are in compliance with  
5 the code.

6 MR. BOURKLAND: Please bear with me.

7 JUDGE HAYNES: I'll allow it to continue.

8 MR. BOURKLAND: Okay. After that effect, those  
9 power lines were not at 12 feet any more, because  
10 after the repair crew came in to restore them, they  
11 stated that it was not the cause of the outage.  
12 None of the removal of trees to the grounds, which I  
13 understand takes written permission to do that, was  
14 necessary because the lines have been out of  
15 compliance these years. The restoration that was  
16 put in there is now growing and maturing and now  
17 they're in there cutting those down.

18 JUDGE HAYNES: Today?

19 MR. BOURKLAND: The last visit. It's at that  
20 time it became apparent that the line elevations  
21 were out of compliance.

22 In 2002 we asked for a meeting of their

1 engineering department to come out and look at the  
2 installation and Rosemary Pekerarow (phonetic) and  
3 other members of her department came out there,  
4 reviewed with us, myself and Mr. and  
5 Mrs. Muehlethaler, and took back with them some  
6 recommendations and five years later nothing still  
7 had been done.

8                   In April of 2006 I filed a complaint  
9 with the Illinois Commerce Commission that their  
10 secondary lines were at 10 feet, 4 inches. To that  
11 complaint, they immediately responded. They were  
12 there the next day and winched them up to 12 feet,  
13 one inch. Today those lines are again are out of  
14 compliance. They're at 11 feet, 4 inches, so  
15 they're not able to maintain that elevation, and  
16 also what has happened in the meantime between 1990  
17 and now is the ICC has adopted the National  
18 Electrical Safety Code which states that in areas  
19 where horses are not restricted, let alone permitted  
20 as they are, those lines should be at 16 feet, and  
21 if that's the case, they're not in the trees because  
22 of the low habitat nature of the trees specified and

1 agreed to by Com Ed, so in essence they have not  
2 honored their portion of that agreement.

3                   So, as we speak today, the secondary  
4 lines at 11 feet, 4 and the primary line is at 16  
5 feet, 2 inches, both of which I have measured and  
6 have documentation, and I also proposed some  
7 solutions to that how to take care of the matter.

8                   Unfortunately, what has happened is  
9 that they are unresponsive until they're exposed in  
10 the media. Both the first time and in the last time  
11 it took another complaint with the ICC because they  
12 had sent tree-trimming crews in there without proper  
13 notification. They are in violation of Public Act  
14 92-214 which states they must give a minimum of 21  
15 days' notice not to exceed a maximum of 90 days, so  
16 I'm looking for a date here. It's approximately in  
17 September of '06 their tree people were caught  
18 trespassing the property, had no notification. It's  
19 a violation of two laws to make an unannounced visit  
20 to cut trees and they were caught in the act.

21                   Mr. Muehlethaler, if you could speak to  
22 what you saw that day.

1 MR. MUEHLETHALER: Yes. Well, a crew came in, an  
2 Asphlundh crew. I went out to talk with them. They  
3 were trimming trees and they were pointing out trees  
4 that were out of compliance. They were to cross the  
5 lines and whatever. They said they were going to  
6 cut them and I said have you notified Mr. Bourkland  
7 and they didn't really respond to me. As a matter  
8 of fact, at that point they quit talking to me soon  
9 after they left, and that was in September of '06.  
10 I don't remember the exact date.

11 JUDGE HAYNES: Thank you.

12 MR. BOURKLAND: Did you notice how much cutting  
13 was done?

14 MR. MUEHLETHALER: No, I don't really recall.  
15 They hadn't really got up to the property between  
16 our houses quite yet, so I think I caught them in  
17 time. They did cut several trees though.

18 JUDGE HAYNES: On your property?

19 MR. BOURKLAND: He is opposite me on the property  
20 line and in the 1990 event some trees on his  
21 property we also leveled outside of the easement.

22 JUDGE HAYNES: Mr. Muehlethaler --

1 MR. MUEHLETHALER: Muehlethaler.

2 JUDGE HAYNES: Muehlethaler. But did you see  
3 tree cutting on your end? Are you talking about his  
4 property or your property?

5 MR. MUEHLETHALER: Our property is adjoined in  
6 the back yard and they were coming up the line and  
7 they were cutting trees or they had started cutting  
8 trees on Mr. Bourkland's property. My property  
9 isn't actually in the easement. It just adjoins it  
10 and I saw the crews coming up with their bright  
11 orange on and immediately went out. I asked my wife  
12 at the same time to call Ken because I know he wants  
13 to know if there's any crews coming.

14 JUDGE HAYNES: Thank you.

15 MR. BOURKLAND: Excuse me a minute.

16 (a brief pause.)

17 I would like you to refer to Exhibit A.  
18 You have a copy of that which gives an aerial  
19 photograph. These are available from the Sidwell  
20 Company and there's two editions. One of them is  
21 marked up in yellow markings and there's a more  
22 recent one that shows the subdivision as it is built

1 out today. The one I'm referring to looks like this  
2 (indicating).

3 JUDGE HAYNES: You provided two copies I mean.

4 MR. BOURKLAND: There's two additional.

5 JUDGE HAYNES: There's two different versions.

6 MR. BOURKLAND: This is the 1988 edition  
7 (indicating) and this is the current (indicating).  
8 I would like to refer to the 1988 edition.

9 JUDGE HAYNES: Okay. It's what?

10 MR. MUEHLETHALER: Exhibit A.

11 MR. BOURKLAND: Exhibit A.

12 JUDGE HAYNES: Let's mark -- one's marked a 2,  
13 maybe no. Do you want to come and get it. One's  
14 marked Exhibit A. Please approach the bench.

15 MR. BOURKLAND: Oh, okay.

16 JUDGE HAYNES: Exhibit A.

17 MR. BOURKLAND: If you view the top half of the  
18 print, you'll see the two properties. Mine's marked  
19 K. Bourkland and the second F. Muehlethaler.

20 MR. GOLDSTEIN: Could we see the two properties  
21 you are referring to, Mr. Bourkland.

22 MR. BOURKLAND: They're right here.



1 MR. GOLDSTEIN: They don't show -- oh.

2 MR. BOURKLAND: F. Muehlethaler. This is the  
3 later copy (indicating). This is the 2006 copy  
4 (indicating). This is 1988 (indicating).

5 JUDGE HAYNES: So Exhibit A is from when?

6 MR. BOURKLAND: Say again?

7 JUDGE HAYNES: When is this picture taken,  
8 Exhibit A?

9 MR. BOURKLAND: The first edition is 1988, the  
10 one that's marked up with yellow.

11 JUDGE HAYNES: Well, we'll refer to it as Exhibit  
12 A now.

13 MR. BOURKLAND: Yes. And what I want to show on  
14 here is I have penciled in the locations of the  
15 utility poles and I numbered them for reference. I  
16 wish also to comment when I purchased this property  
17 in 1971 there were no utility lines through the area  
18 circumscribed by Old Homestead Road and Miller  
19 (phonetic) Lane, so the utility line feeds from the  
20 north, continuously through the area where our two  
21 homes are and continues southward from there.

22 I would now like you to refer to the

1 current copy which in the lower left corner says  
2 copyright 2006, which is --

3 JUDGE HAYNES: Wait. Wait. Wait. Wait. Wait.  
4 Is this it?

5 MR. BOURKLAND: Yes.

6 JUDGE HAYNES: Okay. And --

7 MR. BOURKLAND: As built out today.

8 JUDGE HAYNES: Do you have an exhibit number for  
9 this one?

10 MR. BOURKLAND: This will be A-2.

11 JUDGE HAYNES: A-2. Okay.

12 MR. BOURKLAND: If you start from the same two  
13 properties in the center and look across Old  
14 Homestead Road to the right, it's difficult to see  
15 the numbers, but there's a number 4327006. There is  
16 a parcel number for the county taxes.

17 JUDGE HAYNES: 32600 what?

18 MR. BOURKLAND: 327006. It's printed right over  
19 the structure of the home, be right at my  
20 fingertips.

21 JUDGE HAYNES: Where's the number? Across the  
22 street. Okay.

1       MR. BOURKLAND: On this property is a barn for two  
2 horses.

3       MR. JAVAHERIAN: Your Honor, I don't have a copy  
4 of that map I don't believe. Is there an extra one  
5 available?

6       MR. BOURKLAND: I'll give you mine because I know  
7 this from living in the neighborhood.

8       MR. JAVAHERIAN: Thank you.

9       MR. BOURKLAND: This is my home (indicating) .  
10 This is the Muehlethaler home (indicating). This is  
11 the one we're speaking of directly now, the one  
12 we're speaking to this property (indicating).

13       MR. JAVAHERIAN: Thank you.

14       MR. BOURKLAND: Have you located it, your Honor?

15       JUDGE HAYNES: Yes.

16       MR. BOURKLAND: This parcel has a barn there for  
17 two horses and up until very recently the owners had  
18 those horses. New owners are in there. If you look  
19 at Parcel 24 -- 024, which is down here  
20 (indicating), what you see on that parcel is a barn  
21 for four horses so we do have horses in the  
22 neighborhood. We are permitted, each property

1 owner, to have as many as two horses and under these  
2 covenants that is permitted and any property owner  
3 at any time could purchase a horse.

4 JUDGE HAYNES: Do you have that paper work?

5 MR. BOURKLAND: Yes.

6 JUDGE HAYNES: And do you own horses?

7 MR. BOURKLAND: Not at the present. I do have  
8 colleagues who do have horses and have visited with  
9 them. Exhibit E-1 you have found that?

10 JUDGE HAYNES: Yes.

11 MR. BOURKLAND: Okay. This is a copy from the  
12 Kane County Recorder's Office. I have receipts.

13 JUDGE HAYNES: This is E-1. I have something  
14 marked E-2, maybe it's not marked correctly.

15 MR. GOLDSTEIN: Judge, I believe E-1 is the  
16 declaration of restrictions.

17 JUDGE HAYNES: This (indicating)?

18 MR. BOURKLAND: This.

19 JUDGE HAYNES: Yes.

20 MR. BOURKLAND: Declaration of restrictions and  
21 what is permitted and what's not permitted. It  
22 applies to Mallard (phonetic) Lake Units 1, 2, and

1 3, although this particular copy is for Unit 2, the  
2 lots of interest to minus (sic) 14 and  
3 Mr. Muehlethaler is 9.

4                   Please note on Page 2, Paragraph 8, "No  
5 keeping of beasts, cattle, work horses, pigeons,  
6 poultry, goats, swine, or any other animal, except  
7 domestic pets, and no more than two horses or ponies  
8 shall be permitted on any lot."

9       JUDGE HAYNES: And did you underline this on the  
10 copy?

11       MR. BOURKLAND: I did and highlighted it so we  
12 can readily refer to it.

13       JUDGE HAYNES: Okay.

14       MR. BOURKLAND: It has been stated in other  
15 documentation that since I didn't own horses it  
16 might not apply. The National Electrical Safety  
17 Code makes no distinction whether you own them or  
18 not. The fact is they can be there if neighbors are  
19 guests or invited in with them, and since this is a  
20 matter of safety, I would next like to refer to  
21 Exhibit E-2(a). It's a photograph like this  
22 (indicating).

1 JUDGE HAYNES: Okay.

2 MR. BOURKLAND: This is a colleague of mine from  
3 Fermi Lab who's now retired, Mr. Leon Bartesone  
4 (phonetic), on his horse is able to reach with a  
5 riding crop without straining and contact the  
6 utility line.

7 JUDGE HAYNES: And when was this picture taken?

8 MR. BOURKLAND: This was taken in the summer, the  
9 16th of September.

10 JUDGE HAYNES: What year?

11 MR. BOURKLAND: 2007.

12 JUDGE HAYNES: Okay. Thank you.

13 MR. BOURKLAND: Mr. Bartesone is a voluntary  
14 ranger for the Kane County Forest Preserve District  
15 and this horse is a young horse, measures  
16 14 1/2 hands. A hand is about -- it's equivalent to  
17 4 inches. A mature hand will run 15 to 16 hands.  
18 Anything under 14 hands is considered a pony, so  
19 we're not looking at a big horse there.

20 In April of last year, during the first  
21 complaint to the ICC about their lines being at  
22 10 feet, 4 inches, as I mentioned earlier, each of

1   them up to 12 feet, one inch. To-date, it now  
2   measures 11 feet, 4 inches, and that was measured --  
3   you don't have a copy of this, but that was measured  
4   with a 12 foot to by 4 standing on end, and I can  
5   bring this to the bench.

6       JUDGE HAYNES:   Okay. Have you been provided --

7       MR. BOURKLAND:   I only have one copy.

8       MR. GOLDSTEIN:   What is that a picture of?

9       MR. BOURKLAND:   You are welcome to see it.

10       MR. GOLDSTEIN:   This is --

11       MR. BOURKLAND:   I also measured the primary line  
12   and we find that it's 16 feet, 2 inches, and that  
13   was measured using a technique borrowed from fishing  
14   gear. I attached a one-ounce weight to a fishing  
15   line and cast it up and over that line. I made the  
16   outline until that weight came just to the ground  
17   and carried the rod tip to the ground, took out the  
18   slack and marked the line with a black marker.

19                   After retrieving it, I measured the  
20   length of that line, divided by 2 for the path up to  
21   the primary and back down. Part of the reason  
22   they're not able to maintain tension in that line is

1 that utility pole three, and this map exhibit is  
2 listing to the west at an angle of 8 1/2 degrees.

3 JUDGE HAYNES: Is this Exhibit A you are  
4 referring to?

5 MR. BOURKLAND: Yes. So as they increased the  
6 tension in that line, it continues to put a lateral  
7 force on that utility pole taking it further and  
8 further westward. I have a photograph of that as  
9 well.

10 JUDGE HAYNES: Have you provided this to  
11 respondent?

12 MR. BOURKLAND: No, I did not. So that's my  
13 reference. The level is 2 feet long and from there  
14 I engage the height and calculate the angle from  
15 that. The photograph is angling at 8.3 degrees.  
16 It's calculated using trigonometry.

17 JUDGE HAYNES: This is your No. 3, Utility Pole  
18 No. 3.

19 MR. BOURKLAND: Say again?

20 JUDGE HAYNES: Is this Utility Pole No. 3?

21 MR. BOURKLAND: Pole No. 3, yes. Today that  
22 angle is 8 1/2 inches.



1 JUDGE HAYNES: You say it's leaning which way?

2 MR. BOURKLAND: It's leaning towards the west.

3 JUDGE HAYNES: And it's on this?

4 MR. BOURKLAND: On Pole 3.

5 JUDGE HAYNES: This map is north?

6 MR. BOURKLAND: North is at the top.

7 JUDGE HAYNES: Straight north.

8 MR. BOURKLAND: And in 2002 when the Com Ed

9 engineering crew was out there, we talked about --

10 "we" meaning Mr. And Mrs. Muehlethaler and myself

11 and Rose Pekerarow and the other members of her

12 staff -- about how they could stabilize that for or

13 possibly even bring it upright to help maintain

14 elevations on these lines. That was in 2002.

15 To-date, nothing has been done. We never heard from

16 them again.

17 JUDGE HAYNES: So I'm not an engineer, so this

18 pole leans west and they're tightening it up

19 in-between 2 and 3.

20 MR. BOURKLAND: One and 2.

21 JUDGE HAYNES: Besides 1 and 2.

22 MR. BOURKLAND: Yes.

1 JUDGE HAYNES: And what about between 2 and 3?

2 MR. BOURKLAND: If you tighten between 1 and 2,  
3 you tighten between 1 and 3 at the same time.

4 JUDGE HAYNES: Okay. So what we're talking about  
5 though is that your only complaint against 1 and 2?

6 MR. BOURKLAND: That's where the elevation is out  
7 of compliance. That's where all the construction  
8 was done in 1990 and that was restored through a  
9 settlement with the utility and that is now being  
10 cut into.

11 JUDGE HAYNES: Okay. But between 2 and 3 that's  
12 not at issue?

13 MR. BOURKLAND: That's not an issue. There's  
14 enough clearance because the terrain drops between 2  
15 and 3.

16 JUDGE HAYNES: And when you say they tighten it,  
17 they get pulled over.

18 MR. BOURKLAND: That's correct.

19 JUDGE HAYNES: So why doesn't it get pulled in  
20 the direction of 1 and 2? Why is it going west?

21 MR. BOURKLAND: My estimation is that the turf  
22 there being low is wet most of the time and the

1 tension in the line is pulling it more into a  
2 straight line. There's a slight break point between  
3 2 and 4. At the rate it's going, it will be a  
4 matter of time before its out of the easement  
5 entirely at the top.

6 JUDGE HAYNES: So what you just said -- let me  
7 make sure I understand this, because it ends up  
8 being a triangle and 2 and 4 is like making a  
9 straight line and pulling 3 into the straight line  
10 between the --

11 MR. BOURKLAND: That's correct, pull it into  
12 alignment.

13 JUDGE HAYNES: Okay.

14 MR. BOURKLAND: So that was the issue that was  
15 discussed in 2002, and nothing further ever came of  
16 that, so here we are today with their utility line  
17 at 11 feet, 4 inches. By the NESC it should be at  
18 16 feet and with the appropriate clearance and above  
19 that for the primary line and in Exhibit E I  
20 suggested.

21 JUDGE HAYNES: I'm sorry. Did you say exhibit  
22 what?

1 MR. BOURKLAND: E.

2 JUDGE HAYNES: E? Not E-1 or something?

3 MR. BOURKLAND: I suggested four possible  
4 solutions.

5 JUDGE HAYNES: E-3 are you talking about?

6 MR. BOURKLAND: E-3, yes. Solution was that two  
7 additional utility poles to raise the line mid span,  
8 one pole between Poles 1 and 2, except one between 2  
9 and 3. This would elevate the line to keep it clear  
10 of the property, the vegetation, and the  
11 requirements for the equestrian activity. The  
12 disadvantage would be extensive environment damage  
13 to the property as a consequence of heavy equipment  
14 needed to do drilling and rigging, plus additional  
15 pole and hardware and routine secondary line  
16 clearance still required.

17 The second option for pole extensions,  
18 which is hardware that is readily available from  
19 Com Ed so that the pole effectively can be  
20 lengthened and raised everything accordingly.  
21 These extensions are available up to 6 feet, perhaps  
22 even longer. This would get secondary lines higher

1 than the agreed to vegetation of slow-growing, low  
2 habitat species.

3                   A third option would be to bury the  
4 lines underground. These lines run only from Pole 1  
5 to Pole 4 secondary lines. On Pole 1 and on Pole 3  
6 are service drops to the existing homes; in other  
7 words, there's underground service from the pole top  
8 down to the surface and then underground to the  
9 homes, and burial would require going from the top  
10 of Pole 1 to the top of Pole 2 where a transformer  
11 exist to the top of Pole 3 and on down to Pole 4,  
12 and the final and the simplest solution would be to  
13 install additional transformers one on Pole 1, one  
14 on Pole 3. These would be smaller units than the  
15 one on Pole 3 -- I'm sorry -- 2, because the load  
16 divided over three transformers instead of one.  
17 It eliminates the secondary lines once and for all.  
18 Pole drops to residences are already existing on  
19 those poles.

20                   There is no environmental impact  
21 because no equipment needs to be brought in there to  
22 install those. Its transformers are small enough

1 they could be elevated with block and tackle,  
2 minimal time to install, little additional hardware  
3 needed, work could be completed by a crew of two in  
4 only a brief power outage and all further tree  
5 trimming from there on is eliminated. That's a cost  
6 savings, but the fact that the equestrian activity  
7 takes place within the entire subdivision and  
8 possibly others as well, they are potentially out of  
9 compliance in more areas than this and the fact that  
10 maintenance work has been performed on this at least  
11 once since the outage of 1990 and they're going to  
12 have to do it at least again, because they're out of  
13 compliance with all the codes right now, it would  
14 make sense to raise these lines to 16 feet or as my  
15 preliminary number four proposal as E-3 exhibit, you  
16 eliminate them, and hopefully there would be no more  
17 violations of public law or trespassing. I do not  
18 have any further comments.

19 MR. MUEHLETHALER: I was out or I noticed another  
20 Com Ed employee this fall out measuring the lines  
21 and I went out and talked with the gentleman and I  
22 asked him what height the line was at and he said

1 11 foot, 4 inches was the low point, so the lines  
2 are out of compliance, and he was out measuring --  
3 he did not measure the high voltage line because it  
4 was very wet out that day, but he did measure the  
5 lower one.

6 JUDGE HAYNES: Do you own horses?

7 MR. MUEHLETHALER: I do not.

8 JUDGE HAYNES: Thank you.

9 Anything further?

10 MR. BOURKLAND: Regarding the request if he or I  
11 own horses, the National Electrical Safety Code  
12 makes no distinction and the fact is anybody out  
13 here could purchase a horse at any time without  
14 requiring permits.

15 JUDGE HAYNES: Okay. Did you have another person  
16 with you here today you want to offer testimony?

17 MR. BOURKLAND: Mr. Pfeffer?

18 JUDGE HAYNES: Yes.

19 MR. PFEFFER: What did you say?

20 JUDGE HAYNES: You want to introduce him as a  
21 witness? Does he have testimony today?

22 MR. PFEFFER: No.

1 COMMISSIONER HAYNES: Oh, no? Okay.

2 JUDGE HAYNES: Did you want to move to admit  
3 these exhibits into the record?

4 MR. BOURKLAND: Yes.

5 JUDGE HAYNES: Okay.

6 MR. BOURKLAND: All that I have provided to you.

7 JUDGE HAYNES: What I have is A, which is the old  
8 map, A-2, which is the new map, and then you  
9 mentioned E-1, which is the --

10 MR. BOURKLAND: Covenants and restrictions.

11 JUDGE HAYNES: Yes.

12 CHAIRMAN HAYNES: -- and 2-A, which is a picture  
13 of a horse, and E-3, which is your proposed  
14 solutions, and those are the only exhibits you  
15 identified for the record.

16 MR. BOURKLAND: There was also a photograph of  
17 Pole 3 listing.

18 MR. GOLDSTEIN: Is this new?

19 MR. BOURKLAND: Yes.

20 JUDGE HAYNES: You have provided a lot of other  
21 documents. Did you plan on introducing those or  
22 just the ones I'm just asking you, because how we



1 are going to number the listing old?

2 MR. BOURKLAND: The majority of those had to do  
3 with historical background of this case. Let me  
4 just review what I have here.

5 JUDGE HAYNES: Go ahead.

6 MR. BOURKLAND: I have Exhibit E-2 which is a  
7 copy of the pertinent pages of the National  
8 Electrical Safety Code. I like to enter that.

9 JUDGE HAYNES: Okay. E-2.

10 MR. BOURKLAND: Yes. I would like to also enter  
11 Exhibit E-2(b) --

12 JUDGE HAYNES: You're identifying for the record,  
13 not entering them quite yet. E-2 --

14 MR. BOURKLAND: -- was the first ICC complaint  
15 relevant to low-line elevation opened April 25,  
16 2006.

17 JUDGE HAYNES: What is this printout from?

18 MR. BOURKLAND: This is off the Internet from the  
19 ICC website.

20 MR. GOLDSTEIN: What is it?

21 Sweat sweat: E-2(b).

22 MR. GOLDSTEIN: E-2(b).

1 JUDGE HAYNES: Was this an informal complaint?

2 MR. BOURKLAND: This was transcribed over the  
3 telephone. I attempted to make an Internet entry  
4 and pick up the phone and call the office in  
5 Springfield and they took it verbally. Justin  
6 Cumber (phonetic) was the individual.

7 JUDGE HAYNES: Never seen this before. So you  
8 are saying you actually got this off -- this  
9 printout off our website?

10 MR. BOURKLAND: Yes, correction. This was mailed  
11 to me from Springfield.

12 JUDGE HAYNES: Okay.

13 MR. BOURKLAND: And I was also given direction to  
14 find it on the website. This is a mailed copy.  
15 Once I received it, I didn't print it from my  
16 website location.

17 MR. GOLDSTEIN: Could we see E-2(b). I don't  
18 have that as part of --

19 MR. JAVAHERIAN: I have a copy.

20 MR. GOLDSTEIN: -- E-2 Exhibit.

21 JUDGE HAYNES: This was never docketed, correct?

22 MR. BOURKLAND: Complainant 200606852 under the

1 right-hand corner.

2 MR. JAVAHERIAN: That's a formal document?

3 MR. GOLDSTEIN: Yes.

4 JUDGE HAYNES: Okay. Are there any other

5 E exhibits we can mark?

6 MR. BOURKLAND: Yes, E-4 simply is documentation

7 of pole extensions that I made reference to.

8 JUDGE HAYNES: It's on the same page as E-3?

9 MR. BOURKLAND: It's a separate four pages

10 stapled together.

11 JUDGE HAYNES: Where you have Exhibit E-3 and E-4

12 you are talking about load per ton?

13 MR. BOURKLAND: Yes, but it says E-4 on the top.

14 JUDGE HAYNES: I don't think I have E-4 unless

15 it's in the folder.

16 MR. BOURKLAND: You don't have it?

17 JUDGE HAYNES: Not in your E folder.

18 MR. BOURKLAND: Well, I'll give you another copy.

19 I might have got it mixed up.

20 JUDGE HAYNES: Yes. Okay. E-4. That is the

21 rest of your E's?

22 MR. BOURKLAND: Yes. Those are the exhibits I

1 wish to have entered --

2 JUDGE HAYNES: Okay.

3 MR. BOURKLAND: -- on the record, and then I have

4 some concluding remarks.

5 JUDGE HAYNES: Okay. The leaning pole will be

6 E-5.

7 MR. BOURKLAND: Okay.

8 JUDGE HAYNES: And wasn't there another picture

9 how you measured? So E-6 would be the measuring

10 picture. Okay.

11 MR. BOURKLAND: And this photograph.

12 JUDGE HAYNES: That would be E-5. These are our

13 only copies, correct?

14 MR. BOURKLAND: I have this and if --

15 JUDGE HAYNES: With you today do you have any

16 other copies?

17 MR. BOURKLAND: No.

18 MR. JAVAHERIAN: Your Honor, I could make copies.

19 JUDGE HAYNES: In case they have questions, the

20 other attorneys, please hand it to them and I'll

21 make copies at the end.

22 MR. BOURKLAND: There's additional of these black

1 and white.

2 JUDGE HAYNES: Okay. So Mr. Bourkland has moved  
3 to enter many exhibits here. Should we do them  
4 individually if counsel and staff have objections?

5 MR. BOURKLAND: Perhaps we could recap them.

6 JUDGE HAYNES: Sure. A -- I'm not doing  
7 objections right now. A is an old map. What's the  
8 date on that old map? '97?

9 MR. BOURKLAND: 1988.

10 JUDGE HAYNES: So '88 map, and then A-2 is the  
11 '06 map?

12 MR. BOURKLAND: Yes.

13 JUDGE HAYNES: E-1 is the covenant, E-2(a) is the  
14 horse picture; E-3 is the solutions; E-2 is the  
15 safety code; E-2(b) is the informal complaint; E-4  
16 is the pole extension --

17 MR. BOURKLAND: Yes.

18 JUDGE HAYNES: -- literature.

19 MR. BOURKLAND: Yes.

20 JUDGE HAYNES: E-5, the picture of leaning pole,  
21 and E-6 is the measuring picture.

22 Are there any objections?

1 MR. GOLDSTEIN: I have no objections, Judge.

2 JUDGE HAYNES: Okay.

3 MR. JAVAHERIAN: Staff has no objections either.

4 JUDGE HAYNES: Then those exhibits are entered  
5 into the record.

6 (Whereupon, Complainant's  
7 Exhibit Nos. 1, 2, 3 & 4  
8 were previously marked  
9 for identification and  
10 received in evidence.)

11 MR. JAVAHERIAN: Your Honor, will we be able to  
12 mark those as either Bourkland or Complainant's  
13 Exhibits A, A-2, so on down the road?

14 JUDGE HAYNES: Those are Complainant's Exhibits A  
15 through E-6.

16 MR. JAVAHERIAN: Thank you.

17 JUDGE HAYNES: Is there cross-examination of the  
18 witness?

19 MR. GOLDSTEIN: I have a few questions, Judge.

20 JUDGE HAYNES: Sure.

21 MR. BOURKLAND: I did have concluding remarks.  
22 When do you want to take those?

1 JUDGE HAYNES: We'll have -- I'm guessing the  
2 company does as well and we'll do that at the end.

3 MR. BOURKLAND: Okay.

4 JUDGE HAYNES: And staff.

5 CROSS EXAMINATION

6 BY

7 MR. GOLDSTEIN:

8 Q. Mr. Bourkland, the photographs that you show  
9 of a rider measuring the line in Exhibit E-2(a),  
10 that was photos taken on June 16, 2007. Do you have  
11 that in front of you?

12 A. I do.

13 Q. Did you take those photographs yourself?

14 A. I did indeed.

15 Q. And the person riding do we know what the  
16 measurement is of the stick that that individual is  
17 holding?

18 A. That is a riding crop. I don't have a  
19 dimension for it, but it appears to be about the  
20 length of his arm and it's common practice on a  
21 horse to use such a crop.

22 Q. Can we determine from these two pictures

1 marked Exhibit E-2(a) what the height of that  
2 secondary line is?

3 A. At the time this was taken it was somewhere  
4 between your stated 12 feet, one inch, and what we  
5 measured today as 11 feet, 4 inches, confirmed by  
6 your agent.

7 Q. Do you know what the ambience temperature  
8 was on June 16, 2007?

9 A. Not in absolute terms, but notice the man is  
10 wearing a short-sleeve shirt and foliage is  
11 obviously summer foliage.

12 Q. So do you know what the temperature of the  
13 conductors were on that day?

14 A. Conductor temperature was not measured. I  
15 understand the lines will sag under heavy electrical  
16 load, particularly during air conditioning and  
17 ambience temperatures, but that doesn't explain the  
18 drooping there.

19 Q. Just answer the question if you would,  
20 please. So the measurement on that day was  
21 approximately what in your judgment?

22 A. In my judgment it's the same as it is most



1 recently.

2 Q. And that's 11 feet, 4 inches --

3 A. That's correct.

4 Q. -- of the secondary line?

5 A. That's the measurement your agent made on  
6 the 11th of December, and my measurement was on the  
7 6th of January was a warm weekend, 60 degrees.

8 Q. Where was this measurement taken on your  
9 property?

10 A. Between Poles 1 and 2 at the lowest point.

11 Q. Now the picture of the leaning pole, which  
12 has been marked as Exhibit E-5, Mr. Bourkland --

13 A. Yes.

14 Q. -- when was that picture taken?

15 A. I believe in the upper-right corner you'll  
16 find a date of July 31 '02, upper-right corner in  
17 the margin.

18 Q. Could you show that to me on the photograph?

19 A. Okay. I have a copy of the issue that you  
20 have and that marking is not there; however, the  
21 other two poles were photographs the same day.

22 Q. So my question to you, Mr. Bourkland, is

1 when was this picture taken?

2 A. It was taken the same day. These were

3 7-31-02.

4 Q. All right. And --

5 A. Page 1, Page 2, Page 3.

6 Q. And so they were all taken on the same date,

7 July 31, 2002?

8 A. That's correct.

9 Q. And they show that pole -- this is Pole No.

10 3 and it shows at an angle of approximately 8.3

11 degrees. Is that your testimony?

12 A. That's my testimony.

13 Q. And that's the same angle that it is today?

14 A. No, it's not. It's at 8.5 degrees. It's

15 not a big difference.

16 Q. Do you have a picture of that as of today?

17 A. Yes. Did we enter that?

18 JUDGE HAYNES: Another leaning pole.

19 MR. BOURKLAND: The photograph that shows --

20 JUDGE HAYNES: I don't think we need another

21 picture. You just testified that it's now what

22 angle?

1 THE WITNESS: 8.5.

2 JUDGE HAYNES: Okay. It was at 8.3?

3 THE WITNESS: That's correct.

4 JUDGE HAYNES: Okay. I don't think we need  
5 another picture.

6 THE WITNESS: Yes. That change has taken place  
7 since they tightened it up in April of '06.

8 MR. GOLDSTEIN: Q. Are you saying that since  
9 they tightened the spans in 2006, the angle became  
10 less or more?

11 A. More.

12 Q. Now do you also have pictures of E-6 which  
13 is measurements that I assume you took?

14 A. I did.

15 Q. And you also took the photographs of these  
16 measurements; is that right?

17 A. I did.

18 Q. And when did that occur?

19 A. January 6 of this year.

20 Q. And do you know what the ambient temperature  
21 was on that day?

22 A. That ambient temperature approached 60 or 61

1 degrees that day, and Mr. Muehlethaler took down his  
2 Christmas lights. He can comment on that.

3 MR. MUEHLETHALER: Very nice day.

4 MR. GOLDSTEIN: Q. And you did not measure the  
5 conductors on that day, did you?

6 A. That's a measurement of the secondary -- the  
7 primary I measured in early December.

8 Q. Oh, I'm sorry. All right. So backtracking,  
9 the picture of the secondary was taken in January of  
10 2008?

11 A. Yes.

12 Q. Correct?

13 A. Correct.

14 Q. And the picture of the primary these are all  
15 on your property I assume?

16 A. That's correct.

17 Q. That was taken in December of 2007?

18 A. The measurement I made with the fishing  
19 equipment was in December of 2007 was the  
20 measurements of the primary elevation found to be  
21 16 feet, 2 inches?

22 JUDGE HAYNES: Which is not depicted on that

1 picture, correct?

2 THE WITNESS: That is correct.

3 MR. GOLDSTEIN: Q. So the two photographs that  
4 you are showing as Exhibit E-6, they are of the  
5 secondary line taken in January of 2008; is that  
6 right?

7 A. That is correct. All right. If I could  
8 restate, the measurement in the primary was made  
9 after the report from your field rep. When I saw a  
10 copy of the report that estimated the primary  
11 appearing to be 18 feet, that was a copy of a letter  
12 from your office.

13 Q. Now I assume in looking at Exhibit E-3,  
14 which contains your proposing solutions, your  
15 principle solution is to install the additional  
16 transformer or solution number four as you show it  
17 on that page?

18 A. That's correct.

19 Q. And you talk about the idea of eliminating  
20 secondary lines forever.

21 A. Yes.

22 Q. What evidence do you have of that? Is this

1 your own thought?

2 A. No, it's a matter of fact. You look at this  
3 drawing again --

4 JUDGE HAYNES: And you are referring to Exhibit  
5 A?

6 THE WITNESS: -- which is the 1988 edition of  
7 Exhibit A, your primary line comes into this  
8 subdivision from the north, comes across Old  
9 Homestead Road, goes through the six properties  
10 enclosed by Old Homestead Road and Miller (phonetic)  
11 Lane, exits and branches at Pole 5 to the west and  
12 to the south. There is a utility transformer on  
13 Pole 2 at 37 1/2 KVA unit and from that transformer  
14 secondary lines go from Pole 2 to Pole 1 to service  
15 those two homes on the north of that, circle another  
16 secondary pair, and support ground cable extend from  
17 Pole 2, to Pole 3, to Pole 4. That's the full  
18 extent of that secondary.

19 Q. And the lines are buried --

20 A. The secondaries are not buried --

21 Q. -- to the various residences?

22 A. -- to the various residences. There are

1 drops from the top of the pole to each of the  
2 residences.

3 Q. Is there underground service to those  
4 residences?

5 A. Yes. So a smaller utility transformer at  
6 Pole 1 and Pole 3 can service all of those  
7 residences.

8 Q. Have you investigated what the cost of  
9 adding --

10 A. I have priced.

11 Q. -- the additional transformer?

12 A. 15 KVA transformers can be obtained  
13 depending upon the source from 300 to \$1500.  
14 There's various options available and they're a  
15 common item.

16 Q. Now as a general practice, Mr. Bourkland, do  
17 you have people riding through your property on  
18 horseback?

19 A. From time to time, we have horses in there.  
20 It's not an everyday practice, but the NESC does not  
21 make any distinction.

22 Q. When was the last time somebody rode a horse

1 through your property? Do you recall?

2 A. This summer, this past summer.

3 Q. And that was the person who's taking the

4 measurement of the line?

5 A. I'm taking the measurement.

6 Q. I'm talking about the E-2(a) exhibit. Is

7 that the last time somebody rode through the

8 property?

9 A. That is correct?

10 Q. Okay. And when was the last time before

11 that? Do you recall?

12 A. When did the Sedlocks (phonetic) move?

13 MR. MUEHLETHALER: Two years ago.

14 MR. BOURKLAND: It would be about two years.

15 MR. GOLDSTEIN: Q. Now you mentioned that one of

16 the property owners had a barn. That was where the

17 property was recently sold. There's no longer

18 horses on that property, correct?

19 A. That's correct. That's opposite the

20 Muehlethaler home across the road.

21 Q. And you mentioned there was another property

22 in the area.



1       A.     To the south and west, yes.

2       Q.     That had a barn capable of four horses?

3       A.     Four houses.

4       Q.     Are there horses on the property?

5       A.     Yes.

6       Q.     And do those horses regularly traverse your

7 property?

8       A.     To put it bluntly, I have seen horse shit on

9 the road, yes.

10      Q.     Across the property?

11      A.     But they could come on the property at my

12 invitation.

13      Q.     Have you invited them on the property

14 recently?

15      A.     No.

16      JUDGE HAYNES:   There is a horse trail?

17      THE WITNESS:   No.

18      MR. GOLDSTEIN:   Q.   What needs to be emphasized

19 is that as far as valuing these homes, people who do

20 have equestrian interests are attracted to them for

21 purchase.

22      A.     What I'm saying they could appear at any

1 time.

2 Q. And are you contemplating having horses on  
3 your property --

4 A. Not immediately.

5 Q. -- with a barn?

6 A. Not immediately. I purchased another car  
7 two days ago that I didn't plan to, so --

8 Q. Let's assume -- I'm sorry, Judge.

9 JUDGE HAYNES: So if a horse was going to go on  
10 these lines and had to go on both of your  
11 properties, correct?

12 MR. BOURKLAND: They would go underneath, yes.

13 MR. GOLDSTEIN: Q. Let's assume for purposes of  
14 argument, Mr. Bourkland, that the lines are not in  
15 compliance with the applicability provisions of NESC  
16 as adopted by the Illinois Commerce Commission both  
17 the secondary and primary as you have testified.

18 Would you be willing to pay for the  
19 raising of those lines to what you consider the  
20 appropriate elevation to comply with the NESC?

21 A. The obligation to comply with the NESC  
22 doesn't rest with the customer. It rests with the

1 utility.

2 Q. So the answer is no?

3 A. That is correct. If it were up to me, I'd  
4 put a clothes pole on it.

5 Q. I'm sorry?

6 A. If it was up to me, I'd put a clothes pole  
7 under it, but I don't think you want me tampering  
8 with your equipment.

9 MR. GOLDSTEIN: I have nothing else at this time.

10 JUDGE HAYNES: Staff, do you have any questions?

11 MR. JAVAHERIAN: Can I have just one second to  
12 consult with my client.

13 JUDGE HAYNES: Sure.

14 (A brief pause.)

15 MR. JAVAHERIAN: Staff has no questions, your  
16 Honor.

17 JUDGE HAYNES: Okay. Did you have any -- based  
18 on the cross-examination of Mr. Goldstein, are there  
19 any redirect statements you would like to make,  
20 anything that's occurred to you based on this  
21 questioning?

22 MR. BOURKLAND: No, your Honor, I do not.

1 JUDGE HAYNES: I assume the company is going  
2 next.

3 MR. BOURKLAND: Yes.

4 MR. GOLDSTEIN: Yes.

5 JUDGE HAYNES: How long is it going to be? Two  
6 witnesses? Now I'm just wondering if we should take  
7 a break now or if we're not going to need a break  
8 since it's lunch time.

9 MR. GOLDSTEIN: Why don't we take a short break  
10 now.

11 MR. PARISE: Fifteen minutes?

12 MR. GOLDSTEIN: If we could have about a  
13 10-minute break, we can come back and put your case  
14 on.

15 JUDGE HAYNES: Okay. And then we'll just go  
16 straight through and finish --

17 MR. JAVAHERIAN: You want to go straight through,  
18 that's fine.

19 JUDGE HAYNES: -- after that break and go through  
20 straight through. Let's do that.

21 MR. PARISE: 12:25, your Honor?

22 JUDGE HAYNES: 12:25.

1 (Whereupon, a lunch break  
2 was taken.)  
3 Okay. Let's go back on the record.  
4 Mr. Goldstein.  
5 MR. GOLDSTEIN: Yes. I have three witnesses,  
6 Judge. First witness is Thomas Adams to my right  
7 and two other witnesses, Paul Miceli and Mark Primm.  
8 Could we have the other witnesses sworn?  
9 JUDGE HAYNES: Yes, please. Raise your right  
10 hand.  
11 (Witness sworn.)  
12 Thank you.  
13 MR. GOLDSTEIN: My first witness is Thomas Adams.  
14 THOMAS ADAMS,  
15 called as a witness herein, having been first duly  
16 sworn, was examined and testified as follows:  
17 DIRECT EXAMINATION  
18 BY  
19 MR. GOLDSTEIN:  
20 Q. Mr. Adams, will you state your name, by whom  
21 you are employed, and your business address, and  
22 spell your last name for the record.

1       A.     My name is Thomas Adams, A-d-a-m-s. I'm  
2 employed by Commonwealth Edison. My business is at  
3 2 Lincoln Center in Oakbrook Terrace, 60601-81  
4 (sic). And the rest of the question I don't  
5 remember.

6       Q.     I think that's fine for the moment. What is  
7 your position or title with Commonwealth Edison?

8       A.     My title is consulting engineer. Let me  
9 break that down a little bit. Essentially I work in  
10 the standards department and my responsibilities  
11 include code, regulatory items, and overhead design,  
12 overhead systems design.

13      Q.     And how long have you been employed by  
14 Commonwealth Edison?

15      A.     On January 30 it will be 30 years with the  
16 company.

17      Q.     And how long have you been in your present  
18 position with Com Ed?

19      A.     Since 1995.

20      Q.     And how did you become familiar with the  
21 Bourkland complaint against Com Ed?

22      A.     I don't recall exactly. I think Mr. Parise

1 asked me personally for some assistance in  
2 determining what the applicable codes are and things  
3 like that.

4 Q. Could you describe in some detail your  
5 familiarity with the National Electric Safety Code  
6 and the Commission rules that have adopted portions  
7 of the NESC?

8 A. Sure. As part of our instruction standards,  
9 we have to follow the --

10 (A brief interruption.)

11 Q. Mr. Adams, I believe my last question asked  
12 you to detail your familiarity with the National  
13 Electric Safety Code adopted by the Illinois  
14 Commerce Commission.

15 A. As part of the standard creation process, we  
16 follow the regulatory requirements as adopted by the  
17 Illinois Commerce Commission that include portions  
18 of the National Safety Code. We review the changes  
19 that come up in the code to see that our standards  
20 do comply with that code as it becomes adopted by  
21 the Commerce Commission.

22 As for my familiarity with the code, I

1 have been called on several times to give  
2 depositions in lawsuits involving Commonwealth  
3 Edison and clearance and items like that. I have  
4 also -- the last time that the IEEE, which is The  
5 Institute for Electrical Electronic Engineers, held  
6 its power engineering meeting in Chicago, which I  
7 believe was 2002, I was called upon to give an  
8 8-hour seminar on the National Electric Safety Code.  
9 I have given that several times within Commonwealth  
10 Edison itself. I have also taken classes from a  
11 recognized authority by the name of Alan Clap  
12 (phonetic) on the National Electric Safety Code and  
13 how it pertains to some of the legal cases.

14 Q. Would it be fair to say that you are Com  
15 Ed's expert on the applicability of the NESC to the  
16 Commission rules that have been adopted as part of  
17 the NESC?

18 A. I think that would be a fair  
19 characterization.

20 Q. And have you reviewed the direct testimony  
21 of staff witness Greg Rockrohr in this proceeding?

22 A. Yes, I have.



1 Q. Do you agree with his conclusions regarding  
2 the grandfathering of the Bourkland lines under the  
3 Commission rules?

4 A. Yes, I do.

5 Q. And next let's turn to what has been marked  
6 as Complainant's Exhibit E-3. Those were the  
7 proposed solutions that Mr. Bourkland proposed with  
8 respect to the lines over his property. Have you  
9 reviewed those solutions?

10 A. Yes, I have.

11 Q. Let's start with the one that Mr. Bourkland  
12 favors, that is No. 4, the installation of  
13 additional transformers on Poles 1 and 3.

14 Do you have any problem with the  
15 installation of those additional transformers 1215  
16 KVA on Poles 1 and 3?

17 A. I have several concerns with that one.

18 Q. Could you outline those concerns?

19 A. Well, first of all, you can't just exactly  
20 throw a transformer on a pole. You have to review  
21 the loading that the weight of that transformer  
22 would cause on that pole. Secondly, there is a

1 space requirement that you have for the transformer  
2 of that pole, some OSHA regulations, some NESC  
3 clearances for that matter, and the size of the  
4 transformer you have to -- besides the transformer,  
5 you have an arrester you put on there and a fuse or  
6 we call a cut-up, but it's simply a disconnect from  
7 the primary line to the transformer itself.

8                   I'm trying to think of major ones you  
9 would have to get what he's proposing. You also  
10 have to change that to a dead-end pole, which means  
11 I have to put some sort of guine (phonetic) down  
12 there, which is different.

13                   The other problem I have with that he  
14 talks about eliminating secondaries. I can't  
15 eliminate the neutral. The neutral has to be  
16 continuous. There is a National Safety Code  
17 requirement that you have a continuous neutral on a  
18 multi-grounded system. That's what you have is a  
19 multi-ground system. You have to continue through  
20 there, so I can't really do that without dead-ending  
21 and taking the whole thing underground a little  
22 ways.

1 Q. And so his estimate of approximately \$1500  
2 for each transformer, do you have any comment with  
3 respect to that particular cost that Mr. Bourkland  
4 stated?

5 A. That's referring to the cost of the  
6 transformer only. Again, it doesn't include the  
7 arrestors. It doesn't include cut-out devices. It  
8 doesn't include the guine I was talking about. It  
9 doesn't include the labor that would be required to  
10 put it back there as well.

11 Q. And at this point in time you do not -- do  
12 you have an estimate as to what that cost would be  
13 if solution number four was followed?

14 A. I can give you a guess. Last time I really  
15 looked at it solidly was about two years ago, but at  
16 that time it was a bill of \$5,000 per transformer  
17 installation.

18 Q. And let's now look at No. 2 is his proposal  
19 for pole extensions, which are provided in a little  
20 more detail, not only in Exhibit E-3 but also E-4.  
21 Do you have any comment with respect to his -- the  
22 proposal to in effect raise the additional existing

1 lines?

2       A.     I have a few comments about that. We have  
3 used -- and he notes there I think that they're  
4 available on the Com Ed system. We have used pole  
5 extensions in the past. You have to go back a  
6 number of years to examine the reason why those were  
7 originally done, and those were originally done to  
8 add the neutral on the top of the lines or actually  
9 a static wire -- I'm sorry -- a static wire on the  
10 top of some of our transmission lines.

11                   The reason that's a concern because by  
12 adding something to the top of the pole, you now  
13 have a load higher up that translates down. That  
14 might mean I'm going to have to change out the pole  
15 itself to enable it to handle the extra weight  
16 that's -- without getting too technical, it has to  
17 do with what they call moment arms. It's simply  
18 translating weight like a lever translating weight  
19 to the top of the pole that wouldn't normally be  
20 present. It's an extra weight.

21       MR. BOURKLAND: We understand moment arms. Thank  
22 you.

1 MR. GOLDSTEIN: I didn't hear.

2 THE WITNESS: He said he understood moment arms.

3 JUDGE HAYNES: Just so the record's clear,  
4 moment arms?

5 THE WITNESS: It's a technical engineering term.  
6 It has to do with like torque. You are applying  
7 torque up here that applies to the different forces.  
8 It's called a moment of force or moment arm force.

9 MR. GOLDSTEIN: Q. So if we were to look at E-4,  
10 which is the pole extension proposal that relates to  
11 No. 2 and 3, could you explain what you are talking  
12 about with respect to how weight shifts?

13 A. Looking at that exhibit, essentially what  
14 you are going to be doing is placing the cross arm  
15 with those wires up at the top of the pole or at the  
16 top of the extension, which is moving the load up  
17 how ever tall it is.

18 Let's assume it's going up 4 1/2 feet.  
19 That would move it up 4 1/2 feet. Wind load is  
20 really what it's really designed for. We have to  
21 design for 40-mile-an-hour wind at zero degrees  
22 Fahrenheit with a half-inch height on the wires.

1 That produces one heck of a wind force. That's  
2 really what we're designing. In order to push that  
3 up 4 1/2 feet is going to add a lot more wind load  
4 to the top of that pole that was there before.  
5 whenever we do something like that, we also review  
6 what we call the class of the pole. It's  
7 essentially the diameter of the top of the pole  
8 which dictates somewhat the strength.

9 Q. So in your judgment then if solution number  
10 two were followed, it would -- what would be the  
11 likelihood that you have to replace the pole?

12 A. Without reviewing it, I couldn't give you an  
13 absolute definite answer, but I would put the  
14 probability at better than at half of that to  
15 replace the pole. Judging by the picture I saw,  
16 probably class four pole, I'd probably go like a  
17 three, which is a particular pole just so you know.

18 Q. With respect to those two solutions, numbers  
19 two and four on Exhibit E-3, if either one of those  
20 solutions would be followed by the Commission as a  
21 result of this complaint proceeding, who would bear  
22 the cost of whatever that cost would be for either

1 one of those solutions?

2 A. Typically it's going to be the customer that  
3 bears that cost. Since we're grandfathered in, it  
4 is really the -- it's like a request that we do  
5 something above and beyond what we would normally do  
6 which would then be the customer's responsibility to  
7 pay for it.

8 Q. Now you have heard this morning various  
9 height measurements for the primary and secondary  
10 lines over Mr. Bourkland's property, and do you have  
11 any opinion as to whether those various heights  
12 taken at those various times by Mr. Bourkland are in  
13 compliance with the NESC code sections that are  
14 applicable and adopted by the Illinois Commerce  
15 Commission?

16 A. Based upon what I heard, I would think they  
17 would still be in compliance. One of the things  
18 that's not mentioned in the testimony is in the  
19 grandfather testimony is that before 1990 when the  
20 code really changed to specify an absolute minimum  
21 height what they did was they measured it with a  
22 condition that it was at 60 degrees Fahrenheit and

1 no wind. That's conductor temperature, not ambient  
2 temperature, conductor temperature. They made  
3 allowances for anything up to 120 degrees Fahrenheit  
4 assuming that's normal sunlight. At 60 degrees at  
5 12 feet it might sag down as much as 18 inches up to  
6 120 degrees for that typical span length. There was  
7 a temperature allowance built with that code. I  
8 don't want to get too technical.

9 MR. GOLDSTEIN: I have nothing else of the  
10 witness.

11 JUDGE HAYNES: Do you have cross-examination of  
12 this witness?

13 MR. BOURKLAND: I have some questions of the  
14 witness.

15 JUDGE HAYNES: Go ahead.

16 CROSS EXAMINATION

17 BY

18 MR. BOURKLAND:

19 Q. It's Tom?

20 A. Tom, have you --

21 JUDGE HAYNES: How about Mr. Adams.

22 MR. BOURKLAND: Q. Mr. Adams, yes. You state



1 that you carry a continuous ground --

2 A. Correct.

3 Q. -- on the secondary line.

4 A. Correct.

5 Q. From my observation, that ground does not

6 exist north at the Pole 1, North/South of 5, and

7 there is a ground conductor coming down both Pole 2

8 where the 37 1/2 KVA transformer's installed and

9 it's the only ground on that secondary.

10 A. The ground conductor would be the neutral.

11 Q. The neutral --

12 A. Yes.

13 Q. -- ground?

14 A. No, neural north of Pole 1.

15 Q. Two-twenty single-phase single tab carried

16 to ground neutral?

17 A. I have to see the location you are talking

18 about. Very often we'll have the neutral on primary

19 arm. You have a neutral and primary both on that

20 arm.

21 Q. What I'm stating is -- let me give my

22 credentials. I'm with Fermi Lab. I've been an

1 engineer in electrical and mechanical systems.

2 JUDGE HAYNES: First, I can't hear you,

3 Mr. Bourkland. You are not in this --

4 JUDGE HAYNES: I can't hear you. Do you have  
5 objection?

6 MR. GOLDSTEIN: Yes, Judge. I don't mind him  
7 answering the question. This is the time for him to  
8 ask questions of the witness, not make statements of  
9 what he believes exist at the various poles.

10 JUDGE HAYNES: You know, Mr. Bourkland, I'm  
11 sorry. I didn't hear what you said, so I can't rule  
12 on this. Could you restate your question to the  
13 witness?

14 MR. BOURKLAND: Q. The question to Mr. Adams was  
15 where does his ground continue beyond Pole 1 to the  
16 north, Pole 5 to the south?

17 A. Not having looked at the area, or been out  
18 there, or seen those poles, I can't comment on that.

19 Q. Okay. He just stated -- I'm with Fermi Lab,  
20 an electrical engineer for 38 years and I have lived  
21 out there since 1971 and I don't see any grounds  
22 going beyond those points or any neutral --

1 MR. GOLDSTEIN: Judge, I don't mind him asking  
2 the question and Mr. Adams responding to the  
3 question. I move to strike the rest of his comments.

4 JUDGE HAYNES: You will have the opportunity to  
5 provide -- at the end to provide if you have more  
6 information, however, at this time you are just  
7 asking questions of Mr. Adams.

8 MR. BOURKLAND: Q. Mr. Adams, when maintenance  
9 is down on a utility line, does it then have to come  
10 into compliance current NESC?

11 A. Can you define what you mean by maintenance?

12 Q. When it's out of compliance.

13 A. No. No.

14 Q. When we have a pole that's listing at 8 1/2  
15 degrees and it's out of compliance a second time in  
16 a very short period of time --

17 A. Again, can you define what you mean by  
18 maintenance? That was my question.

19 Q. Any maintenance? When you have to respond  
20 to an ICC complaint that it's at 10 feet, 4 inches.

21 A. Again, the Illinois Commerce Commission in  
22 the adoption has a separate section that I believe

1 it's 305. I can't remember. It's like the very  
2 first page of their adoption. They know there's the  
3 grandfather clause. The grandfather clause allows  
4 us to maintain the existing clearances if it is in  
5 compliance, and from what I have learned so far,  
6 it's in compliance.

7 Q. Irrespective of safety?

8 A. Safety is part of what is followed. Again,  
9 if it's in compliance with the code at the time that  
10 it was constructed, it is deemed to be safe.

11 Q. Do you believe that human life is more  
12 valuable than saving a dollar?

13 MR. GOLDSTEIN: Could we have that question  
14 repeated, please.

15 MR. BOURKLAND: Q. Do you believe that saving a  
16 human life is less important than saving a dollar?

17 MR. GOLDSTEIN: I'm going to object, Judge. He  
18 has to specify what he's talking about with respect  
19 to this particular matter and not as a general  
20 question.

21 JUDGE HAYNES: Sustained.

22 MR. BOURKLAND: I think it's well understood that

1 we can reach those utility lines without a great  
2 deal of effort.

3 JUDGE HAYNES: Okay.

4 MR. BOURKLAND: Q. Is that what you want to  
5 happen?

6 MR. GOLDSTEIN: Objection, again, Judge. Let him  
7 be more specific as to what he's referring to.

8 JUDGE HAYNES: I think that it goes against the  
9 scope of what Mr. Adams is here to testify to. Do  
10 you have specific questions regarding the testimony  
11 he has offered today?

12 MR. BOURKLAND: I will repeat the first question.

13 MR. BOURKLAND: Q. Where is the continuity of  
14 the neutral?

15 MR. GOLDSTEIN: That question's been asked and  
16 answered, Judge.

17 JUDGE HAYNES: I remember that being -- he stated  
18 he doesn't know.

19 MR. GOLDSTEIN: Objection.

20 JUDGE HAYNES: So, Mr. Adams, you haven't visited  
21 this?

22 THE WITNESS: I have not visited the site.

1 JUDGE HAYNES: Oh, continuity of the site? Do  
2 you have other questions for the witness?

3 MR. BOURKLAND: I'm just giving it some thought  
4 here.

5 JUDGE HAYNES: Okay.

6 MR. BOURKLAND: Q. Are you familiar with the  
7 extension to the NESC for pedestrian clearances  
8 where horses are not restricted?

9 A. I'm familiar with Table 232-1, which  
10 contains that clearance at Note 9 which specifies  
11 that the spaces accessible does not necessarily  
12 include those areas where horses and other large  
13 animals are not normally encountered nor reasonably  
14 anticipated I believe is the way the phrasing is on  
15 the note. Now it was not that way prior to 1990.

16 Q. Does it say it has to be posted restricted?

17 A. No. That's not a requirement.

18 MR. BOURKLAND: I have no further questions of  
19 Mr. Adams.

20 JUDGE HAYNES: Okay. Does staff have questions?

21 MR. JAVARIAN: Could I have just one minute, your  
22 Honor.

1 JUDGE HAYNES: Okay.

2 (A brief pause.)

3 MR. JAVAHERIAN: Just a couple of questions, your  
4 Honor.

5 JUDGE HAYNES: Okay

6 CROSS EXAMINATION

7 BY

8 MR. JAVAHERIAN:

9 Q. Mr. Adams, my name is Arshia Javaherian and  
10 I represent staff of the Illinois Commerce  
11 Commission, and I'll be brief here.

12 You did mentioned that the NESC -- and  
13 I'm paraphrasing here. Correct me if this isn't  
14 exactly what you said -- allows for a sag in the  
15 line because of the temperature. Stated another  
16 way, you state the NESC regulates the lines at 12  
17 feet but allows for sag below 12 feet because of  
18 temperature?

19 A. Correct.

20 Q. That is correct?

21 Could you please tell me where in the  
22 code you draw that from?

1       A.     It's not in the present code.  It is in the  
2 previous ones.  The 1984 talks about sag is measured  
3 at 60 degrees Fahrenheit.  I believe it's 232(a)  
4 something about the 1984 code.

5       Q.     Do you know when it was taken out of the --  
6 out of NESC?

7       A.     1990.  That's when they went to the -- I  
8 think they're called uniform clearance reference  
9 system or something.

10      Q.     Thank you.

11                   And are you familiar with the last time  
12 that Commonwealth Edison measured the lines?  I  
13 believe it was in response to Mr. Rockrohr's  
14 testimony and the questions that were asked and  
15 there was a question as to what the insulated  
16 secondary conductor was at.  Are you familiar with  
17 that current measurement?

18      A.     I was shown those measurements this morning,  
19 yes.

20      Q.     And would it be your recollection that was  
21 measured at 11 feet, 9 inches?

22      A.     Correct.



1 Q. And are you aware of when that was taken?

2 A. You mean like --

3 Q. Roughly what month.

4 A. Okay. I want to say like December, but

5 I'm --

6 Q. Would you say that in December the lines  
7 would have not had the sag they would have in the  
8 summer months?

9 A. It's hard to say, because, again, it's the  
10 conductor temperature which would be dictated more  
11 with the load flowing through it than the ambience  
12 around it.

13 Q. As far as -- so, therefore, December could  
14 be -- could have the same sag in your opinion as  
15 July?

16 A. Correct.

17 MR. JAVAHERIAN: No further questions, your  
18 Honor.

19 JUDGE HAYNES: Any redirect?

20 MR. GOLDSTEIN: I have just one comment, Judge,  
21 that Paul Micelli is here as well as Mark Primm and  
22 they'll be addressing some of the questions that

1 have been asked on cross-examination.

2 JUDGE HAYNES: So no redirect?

3 MR. GOLDSTEIN: I have none.

4 JUDGE HAYNES: Thank you, Mr. Adams.

5 MR. GOLDSTEIN: You are excused.

6 JUDGE HAYNES: Call your next witness.

7 MR. GOLDSTEIN: Judge, I would like to call Paul  
8 Miceli.

9 JUDGE HAYNES: Good afternoon. You've already  
10 been sworn this afternoon, correct?

11 MR. MICELI: Yes.

12 PAUL MICELI,  
13 called as a witness herein, having been first duly  
14 sworn, was examined and testified as follows:

15 DIRECT EXAMINATION

16 BY

17 MR. GOLDSTEIN:

18 Q. Mr. Miceli, please state your name and spell  
19 your last name for the record.

20 A. Paul Miceli, M-i-c-e-l-i.

21 Q. And by whom are you employed and in what  
22 position?

1       A.     I am employed by Com Ed.  I'm project lead  
2 in the vegetation management department.

3       Q.     And how long have you worked for  
4 Commonwealth Edison?

5       A.     I have worked -- I've been there 14 years,  
6 10 years as a contractor, four years as  
7 Com Ed employee.

8       Q.     And how long have you been in your present  
9 position?

10      A.     Six years.

11      Q.     And how did you become familiar with  
12 Mr. Bourkland?

13      A.     In response to the notification for tree  
14 trimming, I received a telephone call from him in  
15 April of 2006 stating he did not want us to trim the  
16 trees on the property because he felt that the  
17 secondary wire was too low.  He wanted to ride a  
18 horse under there and he wanted that to be addressed  
19 before we trimmed the trees.

20      Q.     And could you describe the tree-trimming  
21 procedures that Commonwealth Edison follows with  
22 respect to notifying customers that there will be

1 tree trimming?

2 A. We use a couple of different procedures.

3 The one is we mail a postcard to all the customers

4 on a particular circuit. That circuit that

5 Mr. Bourkland lives on I did a request for mailing

6 in February 2006 and I had quite a few locations to

7 send addresses to. There's approximately 25,000

8 customers on this list. He is in here. He's on

9 toward the end of my list but on that particular

10 circuit, so a postcard was mailed to him based on

11 this list. Additionally, we do a publication in

12 local newspapers so that -- which is also part of

13 the requirement for notification.

14 Q. And did Mr. Bourkland ever respond to you

15 with respect to receiving notice that there would be

16 tree trimming?

17 A. Yes. He called prior to the tree trimming

18 before we started and said he did not want tree

19 trimming to take place and I said I would wait until

20 the issue was addressed.

21 Q. Do you recall when that occurred

22 approximately?

1       A.     It was in April of 2006.

2       Q.     Now we have provided, have we not, certain  
3 e-mails with respect to the tree trimming on  
4 Mr. Bourkland's property and they have been marked  
5 as Com Ed Exhibits 1 and 2. Could you look at those  
6 briefly, Mr. Miceli, and generally describe what is  
7 contained first on Com Ed Exhibit 1 and then on Com  
8 Ed Exhibit 2?

9       A.     The first is 2007. This is a description of  
10 an encounter with Mr. Bourkland following tree  
11 trimming performed on his property.

12      Q.     And when did that occur?

13      A.     The encounter occurred when we did the  
14 actual trimming in September 2006.

15      Q.     And does this accurately describe what  
16 occurred when the tree trimming occurred in late  
17 September of 2007?

18      A.     Yes, it does. Once we finished the  
19 trimming, I left to go to another property and the  
20 crew was just finishing picking up there, since they  
21 had completed their tree trimming, and I observed a  
22 vehicle coming at us and then stopping in the middle

1 of the road, making a U-turn, and not sure whether  
2 it was Mr. Bourkland, but as it turns out, he's  
3 chasing after us and driving in the opposite lane of  
4 traffic running cars off the road, running a stop  
5 sign in a 45-mile-an-hour zone through a school zone  
6 attempted to run me into the guardrail. I stopped.

7 MR. BOURKLAND: Objection.

8 THE WITNESS: He got out of his vehicle --

9 MR. BOURKLAND: Objection.

10 THE WITNESS: -- came up to my vehicle.

11 MR. BOURKLAND: Objection. Objection. Nobody  
12 ran you into the guardrail. If it was my intent, I  
13 would have done it.

14 THE WITNESS: I was able to stop.

15 JUDGE HAYNES: Hold on. I understand that  
16 perhaps you don't agree with his account.

17 MR. GOLDSTEIN: Q. Now this e-mail that's  
18 contained on Com Ed Exhibit 1 is dated September 27,  
19 2006, when was the actual tree trimming accomplished  
20 on the Bourkland property?

21 A. It was that day, September 27th.

22 Q. And you were present during the time that

1 the tree trimming was done?

2 A. That's correct.

3 Q. And who does the tree trimming for Com Ed?

4 A. Contractor Asplundh.

5 Q. Would you spell that for the record?

6 A. A-s-p-l-u-n-d-h.

7 Q. And you were physically present when they  
8 did the tree trimming?

9 A. Yes.

10 Q. Is that right?

11 A. Yes, that's correct.

12 Q. Now could you tell us where the trees are  
13 with respect to the overhead lines that were trimmed  
14 on September 27, 2006?

15 A. There were several trees at the rear of the  
16 property, some growing within the easement, some to  
17 the side of it. I know I spoke to lower growing  
18 species, but there are several trees -- there's Elm,  
19 Mulberry, which it tends to be large-growing  
20 species. There was -- there were branches in  
21 contact with both the primary and secondary wires  
22 we went back there to trim.

1 Q. The second page of Com Ed Exhibit 1 is an  
2 e-mail from Paul Kelligan (phonetic), and you were  
3 copied on this, and it's dated September 26, 2006.  
4 That was the day before the tree trimming occurred?

5 A. Well, actually there's another one that is  
6 prior to that, but I believe September 9th where  
7 following the evaluation of the secondary wires Paul  
8 Kelligan informed me he had left a message for  
9 Mr. Bourkland and that the issue had been addressed.

10 Q. And that is contained on Com Ed Exhibit 2;  
11 is that right?

12 A. That's correct.

13 Q. Now with respect to Com Ed Exhibits 1 and 2,  
14 these are e-mails that are kept in the ordinary  
15 course of Com Ed's business, are they not?

16 A. Yes.

17 Q. And they are part of the company's books and  
18 records; is that right?

19 A. That is correct.

20 Q. And there is a Com Ed Exhibit 3 which is a  
21 postcard. Could you describe what the postcard is  
22 meant to do?



1       A.     It is meant to provide the customer with  
2 notification that we would be doing tree trimming,  
3 provide the phone number of the Illinois Commerce  
4 Commission as required, and I'm not sure if this in  
5 2006 we had that on there, but we do currently have  
6 an 800 number whereif a customer they're interested  
7 in getting a hold of us can get a hold of us and  
8 contact us and it makes it easy for them.

9       Q.     Let's now turn to Com Ed Exhibit 3-A. That  
10 is a letter dated August 25, 2006 to Mr. Bourkland,  
11 is it not? Could you describe in general terms what  
12 is contained in that letter?

13      A.     It is our standard refusal letter whereif  
14 customers do not want us to trim their trees, once  
15 we feel we have adequately addressed their concerns,  
16 we would send this letter out to let them know we  
17 are going to be out there to trim the trees. This  
18 is dated August 25, 2006 which is approximately --  
19 well, a little more than 30 days before we actually  
20 did the trimming.

21      Q.     Are there instances where Commonwealth  
22 Edison is allowed to trim trees within its easement

1 without a landowner's permission?

2 A. Yes, there is under emergency situations.

3 This particular property had gone through an extra  
4 growing season. As I stated, there were trees in  
5 contact with the primary, which really is a safety  
6 hazard, and it was time for us to address the issue,  
7 and this outline in the easement provisions we went  
8 out there and trimmed the trees.

9 Q. And, in your judgment, Mr. Miceli, were the  
10 procedures that Commonwealth Edison followed with  
11 respect to remaining on Mr. Bourkland's property  
12 within the Commission rules and the law?

13 A. Yes, they were. We followed ANSI 8300  
14 clearance standards or tree trimming standards.

15 Q. What about with respect to notification of  
16 Mr. Bourkland that the tree trimming was going to  
17 occur?

18 A. We had conversations throughout 2006. There  
19 was more than adequate communications with him much  
20 further beyond what we would normally do, I think  
21 even more conversations with Mr. Bourkland than I do  
22 with any other customer.

1 MR. BOURKLAND: Objection.

2 JUDGE HAYNES: Overruled.

3 MR. GOLDSTEIN: Q. Was there -- I'm sorry.

4 JUDGE HAYNES: I believe he objected to

5 Mr. Miceli's last statement.

6 MR. GOLDSTEIN: And --

7 JUDGE HAYNES: I overruled it.

8 MR. GOLDSTEIN: -- I have no other questions of

9 Mr. Miceli. I would move into evidence Com Ed

10 Exhibits 1, 2, 3, and 3(a).

11 JUDGE HAYNES: Have you provided copies of these

12 exhibits?

13 MR. GOLDSTEIN: Yes.

14 MR. JAVAHERIAN: I don't have -- I have one

15 e-mail and some notes. I don't know that the letter

16 that was sent to Mr. Bourkland or anything else.

17 JUDGE HAYNES: Mr. Bourkland, do you have copies?

18 MR. BOURKLAND: I do.

19 JUDGE HAYNES: Okay. Okay. Do you have

20 questions for the witness, Mr. Bourkland?

21 MR. BOURKLAND: Yes, I do, and I also have a

22 question for Mr. Goldstein.

1 MR. GOLDSTEIN: I'm not a witness, Mr. Bourkland.

2 MR. BOURKLAND: I'm asking --

3 JUDGE HAYNES: What is the question for

4 Mr. Goldstein?

5 MR. BOURKLAND: -- why when there was a request

6 for disclosure this was not provided?

7 MR. GOLDSTEIN: What wasn't?

8 MR. BOURKLAND: My request for the note and memos

9 between Com Ed personnel and Paul Miceli.

10 MR. GOLDSTEIN: I thought we provided that to

11 you.

12 MR. BOURKLAND: No, sir.

13 MR. GOLDSTEIN: Well --

14 MR. BOURKLAND: There's far more here than was

15 provided to me.

16 MR. GOLDSTEIN: I don't think so.

17 CROSS EXAMINATION

18 BY

19 MR. BOURKLAND:

20 Q. Okay. Mr. Miceli, in an e-mail you wrote

21 after your surprise visit, second line in the first

22 paragraph states, we did not tell Mr. Bourkland we

1 were coming.

2 JUDGE HAYNES: So we're talking about Exhibit --

3 MR. BOURKLAND: Exhibit 1.

4 JUDGE HAYNES: -- Exhibit 1. Okay.

5 THE WITNESS: Right. Well, following  
6 notification, I don't make an appointment with the  
7 customer to come out there when we're doing refusal  
8 trimming.

9 MR. BOURKLAND: Q. Were you aware of ongoing  
10 dialogue between me and Mr. Kelligan --

11 A. Yes.

12 Q. -- and he informed about the fact that the  
13 discussions since 19 -- I'm sorry -- 2002, an  
14 engineering visit, and this was an ongoing issue and  
15 we had agreed there would be no trimming until that  
16 was resolved?

17 A. Yes, and there is one e-mail does state that  
18 he did leave you a message, he called and left a  
19 message. He told you that the issue was addressed  
20 and that we would be coming out.

21 Q. Can you certify that message though?

22 A. All I know is what he told me. He talked to

1 you and he said you made the comment that there  
2 was -- your having an issue with your wife and  
3 that's maybe why you didn't get the message.

4 Q. Perhaps there was no evidence of any  
5 postcard either.

6 A. The postcards were sent in February.

7 Q. Do you customarily trespass on peoples'  
8 property?

9 A. No. We follow the easement provisions which  
10 do specifically state we're allowed to enter your  
11 property to maintain the trees.

12 Q. You make reference in here this is done all  
13 the time.

14 A. I'm sorry. I'm not sure what you are  
15 referring to.

16 JUDGE HAYNES: What are you referring to? What  
17 is all the time?

18 MR. BOURKLAND: Q. I'm unable to reference it  
19 immediately, but I do recall it was in the  
20 correspondence, but I wish to make it clear that  
21 that's not going to be tolerated and your colleagues  
22 have indicated that it's a civil matter and I read

1 that into the materials I backed up.

2 MR. GOLDSTEIN: I move to strike that, Judge, and  
3 it's not the question and some kind of comment  
4 with respect to what may or may not occur at some  
5 time in the future which has nothing to do with this  
6 particular complaint.

7 JUDGE HAYNES: I'll read it in the record;  
8 however, it is not a question and you don't have to  
9 answer it.

10 MR. BOURKLAND: Q. Another question of  
11 Mr. Miceli, in the first two lines of your e-mail to  
12 Edward L. Cunningham "I have good news. We trimmed  
13 the refusal." Were you aware that ongoing  
14 negotiations were still taking place and did that  
15 get respected?

16 A. Yes, absolutely, and, as I stated before,  
17 Mr. Kelligan let me know that the issue had been  
18 addressed and we could move forward with the tree  
19 trimming.

20 Q. That's why you are here today.

21 JUDGE HAYNES: Next question.

22 MR. BOURKLAND: That was a statement, your Honor.

1 I could make another statement but I'll withhold it.

2 JUDGE HAYNES: Right now if you have questions  
3 for Mr. Miceli. You will have an opportunity to  
4 provide additional testimony.

5 MR. BOURKLAND: Okay.

6 JUDGE HAYNES: No further questions?

7 MR. BOURKLAND: I rest.

8 JUDGE HAYNES: Okay. Does staff have questions  
9 for this witness?

10 MR. JAVAHERIAN: One minute, your Honor.

11 JUDGE HAYNES: Sure.

12 MR. JAVAHERIAN: Just a couple of questions, your  
13 Honor.

14 JUDGE HAYNES: Sure.

15 CROSS EXAMINATION

16 BY

17 MR. JAVAHERIAN:

18 Q. Mr. Miceli, excuse me. My name is Arshia  
19 Javaherian. I represent staff. I just have a  
20 couple of questions for you. First question is is  
21 it Com Ed's practice to trim trees on the insulated  
22 secondary lines?



1       A.     Our clearance standards are two feet for  
2 regrowth unless it's established there's heavy  
3 content.

4       Q.     And when you say your standards, is this  
5 Com Ed's in-house standards, or is this ICC's  
6 standards, or are there some other codes that you  
7 are following here?

8       A.     I would say in-house, but it's my  
9 understanding that the ICC is well aware of what our  
10 standards are and that the ICC is in agreement with  
11 those standards.

12      Q.     And then just follow-up with that, is there  
13 any change in those practices or in-house standards  
14 when the tree trimming on the secondary line is  
15 around a primary conductor that is in the same span?

16      A.     Yes, because we don't trim for stand-alone  
17 secondary, so we only trim for secondary when we're  
18 trimming for the primary unless there's heavy  
19 content.

20      MR. JAVAHERIAN:   Just one minute.

21      THE WITNESS:   One minute, please.

22      MR. JAVAHERIAN:   Q.   I'm just going to ask

1 clarification questions regarding my first question  
2 just to make sure we're on the same page. I  
3 neglected to state in the first question when it  
4 is -- when you said it's your practice to trim  
5 around secondary lines, that is when it is a  
6 stand-alone secondary. Is that -- would your answer  
7 be the same or your answer would be different?

8 A. No. It's a stand-alone secondary.

9 Generally, we do not trim for stand-alone secondary  
10 unless its primary present we would not be trimming.

11 MR. JAVAHERIAN: No more further questions from  
12 staff.

13 JUDGE HAYNES: Okay. Do you have redirect?

14 MR. GOLDSTEIN: There is no redirect, Judge.

15 JUDGE HAYNES: Thank you.

16 MR. GOLDSTEIN: Was there ruling on the Exhibits  
17 1, 2, 3, and 3(a)?

18 JUDGE HAYNES: There is not.

19 Do you have an objection to having  
20 these entered into the record?

21 MR. BOURKLAND: I'm sorry. I didn't hear the  
22 question. I was thinking of something.

1 JUDGE HAYNES: Sure. Do you have an objection to  
2 entering Com Ed Exhibits 1, 2, 3, and 3(a) into the  
3 record?

4 MR. BOURKLAND: I have some objections with  
5 Exhibit 1 as it's written with a great deal of  
6 hyperbole and I don't think it's an accurate account  
7 of the vegetation people and their behavior.

8 JUDGE HAYNES: You will have an opportunity to  
9 provide your version of the events if you want when  
10 we provide your rebuttal testimony, so on that basis  
11 I wouldn't deny admission into the record.

12 MR. BOURKLAND: Okay.

13 JUDGE HAYNES: Okay. Do you have any other --  
14 does staff have an objection?

15 MR. JAVAHERIAN: No objection, your Honor.

16 JUDGE HAYNES: Okay. Although I do question how  
17 relevant the whole tree-trimming discussion is to  
18 the height of the lines, but he testified to it and  
19 so we'll let -- is it Com Ed's 1, 2, 3, and 3(a)  
20 will be admitted into the record.

21

22

1 (Whereupon, Com Ed  
2 Exhibit Nos. 1, 2, 3 &  
3 3(a) were previously  
4 marked for identification  
5 and received in  
6 evidence.)

7 MR. GOLDSTEIN: Thank you, Judge.

8 JUDGE HAYNES: Okay.

9 MR. GOLDSTEIN: The witness is excused, Judge?

10 JUDGE HAYNES: Yes. Thank you.

11 MR. GOLDSTEIN: I would like to call Mark Primm  
12 as the final witness.

13 JUDGE HAYNES: Good afternoon.

14 MR. PRIMM: Good afternoon.

15 JUDGE HAYNES: Mr. Primm, I would like to remind  
16 you you've been sworn in this afternoon.

17 MR. PRIMM: Yes.

18 MARK PRIMM,  
19 called as a witness herein, having been first duly  
20 sworn, was examined and testified as follows:

21

22

1 DIRECT EXAMINATION

2 BY

3 MR. GOLDSTEIN:

4 Q. Mr. Primm, would you state your name for the  
5 record and spell your last name.

6 A. My name is Mark Primm. The last name is  
7 spelled P-r-i-m-m.

8 Q. By whom are you employed and in what  
9 capacity?

10 A. I'm employed by Com Ed in the capacity of  
11 emergent work supervisor of construction in the west  
12 central region.

13 Q. And could you generally describe your duties  
14 as supervisor?

15 A. My duties are the coordinating and  
16 scheduling of the emergent activities as well as  
17 foliage and craftsmen management.

18 Q. And when you talk about the emergent work  
19 supervisor, what does that really mean?

20 A. What that really means is if there's something  
21 that is broken, then if there's a power outage, it  
22 is my responsibility to make certain that we restore

1 that power in a timely fashion and/or we make  
2 repairs to items in a timely fashion if there's  
3 something that is broken.

4 Q. And are you the supervisor of a William E.  
5 Sopodas S-o-p-o-d-a-s?

6 A. Yes, I am.

7 Q. And did you direct Mr. Sopodas to go out to  
8 the property to take measurements of various lines  
9 on the property?

10 A. Yes, I did.

11 Q. And this was done in response to certain  
12 questions that were raised in the testimony of  
13 Mr. Greg Rockrohr on behalf of staff; is that right?

14 A. That is my understanding; that is right.

15 Q. And Mr. Sopodas went out to the property,  
16 did he not?

17 A. Yes, Mr. Sopodas went out to the property  
18 and took measurements behind the address  
19 6 N- as November - 347 Old Homestead Road.

20 Q. And when he took those measurements and so  
21 forth, he provided you with an e-mail describing the  
22 measurements and what he did out at this

1 property; is that correct?

2 A. That is correct.

3 Q. He also in effect responded to what will be  
4 marked as a joint exhibit of staff and Com Ed which  
5 was in response to the various requests for  
6 information made by Mr. Rockrohr in his testimony;  
7 is that right?

8 A. That's correct.

9 Q. And I show you now what's been marked as  
10 Com Ed Exhibit 4, a series of e-mails to you from  
11 Mr. Sopodas, are they not?

12 A. That is correct.

13 Q. And they describe what he did when he went  
14 out to the property, Bourkland, property beginning  
15 on December 12, 2007; is that right?

16 A. Yes, that is right.

17 Q. And the Com Ed Exhibit 4 those various  
18 e-mails they're part of the books and records of  
19 Commonwealth Edison Company, are they not?

20 A. That is correct, they are.

21 Q. And they're kept in the Commonwealth Ed  
22 Company's ordinary course of business; is that

1 right?

2 A. That is right.

3 MR. GOLDSTEIN: I have nothing else of the  
4 witness. I would move into evidence Com Ed Exhibit  
5 4.

6 JUDGE HAYNES: Okay. Is there any objection?

7 MR. JAVAHERIAN: I have not seen Com Ed Exhibit  
8 4, your Honor.

9 (Document tendered.)

10 Mr. Bourkland, do you have any  
11 objection?

12 MR. BOURKLAND: I have questions for the witness.

13 MR. JAVAHERIAN: Staff has no objection to  
14 admission of Com Ed Exhibit No. 4.

15 JUDGE HAYNES: Do you have objection to admitting  
16 the exhibit?

17 MR. GOLDSTEIN: He has cross-examination.

18 MR. BOURKLAND: I dispute the accuracy of these  
19 measurements.

20 JUDGE HAYNES: Do you want to go ahead and  
21 cross-examine the witness and then let me know if  
22 you object. Go ahead and cross-examine the witness.



1 CROSS EXAMINATION

2 BY

3 MR. BOURKLAND:

4 Q. Is it Mr. Primm?

5 A. Yes, it is, sir.

6 Q. On the day you were sent out there, what was  
7 the weather like?

8 A. I did not personally go out there. An  
9 employee of mine went out there.

10 Q. Were you aware of the weather that day?

11 A. Sir, it was in December, so I'm not exactly  
12 certain what the temperatures were.

13 Q. Are you aware it had been raining all day  
14 and everything was thoroughly soaked?

15 A. No.

16 Q. And you are asking him to measure utility  
17 lines under wet conditions. What did he use for  
18 measuring device?

19 JUDGE HAYNES: One question. At the time were  
20 you aware that it had been raining?

21 THE WITNESS: If it was raining that day, then,  
22 yes, I would have been aware that it was raining.

1 Do I specifically remember? My answer to that is,  
2 yes, it was raining. I do know it was raining.

3 MR. BOURKLAND: Mr. Muehlethaler, do you know if  
4 it was raining?

5 MR. MUEHLETHALER: Yes, it was.

6 MR. GOLDSTEIN: Wait a second.

7 JUDGE HAYNES: Hold on. We're just asking  
8 questions of --

9 MR. GOLDSTEIN: If Mr. Bourkland wants to put in  
10 kind of a rebuttal --

11 JUDGE HAYNES: Thank you, Mr. Goldstein.

12 MR. GOLDSTEIN: -- he certainly has a right to do  
13 that.

14 MR. BOURKLAND: Your --

15 MR. GOLDSTEIN: To ask his own witness this  
16 question at this time is --

17 MR. BOURKLAND: Pardon me. If I don't follow  
18 exact legal procedure, I'm not an attorney. I'm an  
19 engineer.

20 JUDGE HAYNES: Understood. Okay. So your first  
21 question he has answered. I don't recall your  
22 second question.

1       MR. BOURKLAND:   Q.   What was the technique used  
2   to measure that?

3       A.    He has a fiberglass measuring stick.

4       Q.    Were you aware that he refused to touch the  
5   7.2 (sic) KVA line?

6       A.    I was aware of that.

7       Q.    Because it was wet?

8       A.    I was aware of that.

9       Q.    He makes a claim here that the secondary  
10   line was at 11 feet, 9.

11      A.    That's correct.

12      Q.    And, yet, he spoke to my witness and told  
13   him it's 11 feet, 4 and in earlier testimony here  
14   did you hear me show the photograph of 11.4?

15      A.    Did I hear your testimony?   That's correct.

16      Q.    So I have doubts that what he saying is  
17   correct.

18      A.    You had a two-part question and you had a  
19   question that was not a two-part question.   I did  
20   hear your testimony, but you asked another question  
21   about was I aware that he talked to your neighbor.  
22   The answer to that question is no.

1 Q. We have verified that. His assessment on  
2 the primary line did he actually measure that?

3 A. I believe he went out there a second time to  
4 take the measurement.

5 Q. Did he measure it at any time?

6 A. My understanding he did measure the primary,  
7 so the answer is yes.

8 MR. BOURKLAND: I would like an opportunity to  
9 meet with this man on the site.

10 JUDGE HAYNES: Do you have any further questions  
11 for the witness?

12 MR. BOURKLAND: No, I do not.

13 JUDGE HAYNES: Okay. Do you have an objection to  
14 admitting Com Ed Exhibit 4 into the record?

15 MR. BOURKLAND: Yes, I do. I believe it is  
16 accurate.

17 JUDGE HAYNES: Okay.

18 MR. BOURKLAND: I verified that myself.

19 JUDGE HAYNES: And you are talking about the  
20 11 foot, 9 measurement?

21 MR. BOURKLAND: I'm talking about both  
22 measurements, secondary and primary.

1 JUDGE HAYNES: Okay.

2 MR. BOURKLAND: And he further states in his memo  
3 please contact me if you have any questions.

4 JUDGE HAYNES: Are you talking about now from  
5 Mark to Bill?

6 THE WITNESS: The question was from Bill to me is  
7 that what you are stating?

8 MR. BOURKLAND: Q. That's what it states there,  
9 but I question as well --

10 JUDGE HAYNES: Okay. I think that this is  
11 relevant as to the company's measurement of the  
12 lines and this will be admitted into the record and  
13 you will be given an opportunity to provide rebuttal  
14 testimony.

15 (Whereupon, Com Ed  
16 Exhibit No. 4 was  
17 previously marked  
18 for identification and  
19 received in evidence.)

20 Is there redirect of the witness?

21 MR. GOLDSTEIN: No redirect, Judge.

22 JUDGE HAYNES: Okay. So, staff, would you like

1 to present your witness?

2 MR. GOLDSTEIN: I'm sorry.

3 MR. JAVAHERIAN: We don't have any questions.

4 Yes, your Honor, we're ready to present

5 Mr. Rockrohr.

6 MR. ROCKROHR: Good afternoon.

7 JUDGE HAYNES: Good afternoon. Mr. Rockrohr,  
8 please raise your right hand.

9 (Witness sworn.)

10 Thank you.

11 GREG ROCKROHR,

12 called as a witness herein, having been first duly  
13 sworn, was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY

16 MR. JAVAHERIAN:

17 Q. Good afternoon, Mr. Rockrohr. Would you  
18 please state your name and spell your last name for  
19 the record.

20 A. Yes. My name is Greg Rockrohr,  
21 R-o-c-k-r-o-h-r.

22 Q. And by whom are you employed, sir, and what

1 address?

2 A. I'm employed by staff on the Illinois  
3 Commerce Commission at 527 East Capitol Avenue in  
4 Springfield, Illinois.

5 Q. And what is your position with staff and  
6 what is your specific position?

7 A. I'm a senior electrical engineer.

8 Q. Do you have before you a document marked as  
9 ICC Staff Exhibit No. 1.0 labeled as the direct  
10 testimony of Greg Rockrohr?

11 A. Yes.

12 Q. And did you cause or did you create this  
13 document labeled as ICC Staff Exhibit No. 1.0?

14 A. Yes.

15 Q. Are there any corrections that you need to  
16 make to ICC Exhibit 1.0?

17 A. No.

18 Q. If I were to ask you these questions today,  
19 would your answers be the same as they were when you  
20 created this document?

21 A. Yes.

22 MR. JAVAHERIAN: With that, your Honor, we would

1 like to move into the record ICC Exhibit No. 1.0,  
2 the direct testimony of Greg Rockrohr and I tender  
3 him for cross.

4 JUDGE HAYNES: Is there any objection to entering  
5 this testimony into the record?

6 MR. BOURKLAND: I have no objection.

7 MR. GOLDSTEIN: No objection.

8 JUDGE HAYNES: Okay. Staff Exhibit 1.0 will be  
9 admitted into the record.

10 (Whereupon, Staff Exhibit  
11 No. 1.0 was marked for  
12 identification and  
13 received in evidence.)

14 MR. JAVAHERIAN: Your Honor, may I also move for  
15 the joint stipulation --

16 JUDGE HAYNES: Yes.

17 MR. JAVAHERIAN: -- at this time? I like to move  
18 for a joint stipulation between Com Ed and the  
19 Illinois Commerce Commission staff labeled Joint  
20 Exhibit 1.0. It is a document with a stipulation  
21 marked on it and then followed -- I'll follow it by  
22 response from -- followed by response from I believe



1 Mr. Sopodas to questions that were posed by  
2 Mr. Rockrohr to the company at the end of his  
3 testimony.

4                   The company has agreed to have these  
5 entered into the record with staff and we feel that  
6 as the stipulation states it's to preserve the  
7 economy -- to preserve administrative economy that  
8 this is the best way to get this information into  
9 the record as it was submitted via discovery.

10       JUDGE HAYNES: Is there any objection,  
11 Mr. Bourkland?

12       MR. BOURKLAND: No.

13       MR. GOLDSTEIN: I have no objection obviously.

14       JUDGE HAYNES: Okay. Then Joint Exhibit 1.0  
15 Stipulation will be admitted into the record.

16                               (Whereupon, Joint Exhibit  
17                               No. 1.0 Stipulation was  
18                               marked for identification  
19                               and received in  
20                               evidence.)

21                   Okay. Do you have any questions for  
22 the witness?

1 MR. BOURKLAND: No.

2 JUDGE HAYNES: Does the company have any  
3 questions for the witness?

4 MR. GOLDSTEIN: I have a question or two, Judge.

5 CROSS EXAMINATION

6 BY

7 MR. GOLDSTEIN:

8 Q. Mr. Rockrohr, have you had an opportunity to  
9 examine Joint Exhibit 1 and material contained on  
10 that exhibit and in particular the responses to the  
11 information that you requested on Page 6 of your  
12 direct testimony, have you not?

13 A. Yes.

14 Q. And do the responses satisfy you that the  
15 company, Com Ed, has fully answered those requests  
16 -- four requests for information?

17 A. Yes.

18 Q. Is it fair to say that to summarize your  
19 testimony that your testimony states that there  
20 really is no violation of the Commission rules by  
21 Com Ed in this complaint matter?

22 A. No, I would not say that as a good

1 characterization because in my testimony I stated  
2 that it was my understanding that the height of  
3 Com Ed's wires were at 12 feet. The information  
4 that Com Ed provided did not corroborate that.

5 Q. You mentioned, Mr. Rockrohr, that it was  
6 your understanding that the measurement -- the  
7 secondary line was 11 feet, 9 inches. Do you recall  
8 that from your last answer?

9 A. No. My last answer was that I testified  
10 that it was 12 -- my understanding that it was 12  
11 feet but that your exhibit showed that it was  
12 something less than that.

13 Q. Is it your testimony that at 11 feet,  
14 9 inches, there is a violation of the NESC code  
15 adopted by the Commission?

16 A. It is my understanding that there is, yes.

17 Q. Mr. Rockrohr, are you aware that with  
18 respect to the code that was in place at the time  
19 the wires were installed that there was an 18-inch  
20 variance due to temperature of the conductors?

21 A. No.

22 MR. GOLDSTEIN: I have nothing else, Judge. I

1 would like to offer back Mr. Adams to respond to the  
2 last question in regard to the temperature of  
3 conductors and the effect on the lines -- on the  
4 secondary lines.

5 MR. JAVAHERIAN: Your Honor, I think -- if I  
6 understand where he's going with this, I think that  
7 I did ask the question earlier and we did receive an  
8 answer as far as where he feels that the code, if he  
9 does want to expound upon that, I think staff would  
10 be willing to allow that with the caveat that there  
11 is quite a bit of research still need to be done as  
12 far as what code was in place at what time and when  
13 it was adopted and when it was -- it was not, and I  
14 think we have the information at hand. I'm not sure  
15 if additional testimony is the way to go.

16 I think at this point it's just a  
17 matter of a legal question as to whether the  
18 discovery referred to earlier was adopted or not.  
19 Staff would be willing to concede that without  
20 having to go back into what witness Adams has said.

21 MR. GOLDSTEIN: That's fine, Judge.

22 JUDGE HAYNES: That's fine. I did have a

1 question for the witness then.

2 EXAMINATION

3 BY

4 JUDGE HAYNES:

5 Q. So honestly, depending upon what the code  
6 says, if it is out of compliance, whose  
7 responsibility would it be to -- if you're aware, to  
8 pay for moving this line?

9 A. If the -- in other words, if the lines are  
10 lower than what the code allows, who should pay for  
11 it?

12 Q. Correct, if you know.

13 A. I think that's a legal matter.

14 Q. If they are found to be out of compliance  
15 with the old code, when they're brought into  
16 compliance, would they have to be brought in  
17 compliance with the old code or brought into  
18 compliance with the new code?

19 A. The Commission rules would require them to  
20 be brought into compliance with the old code.

21 Q. Okay. Did you have something you wanted to  
22 add?

1       A.     It would be up to the discretion of the  
2 Commission whether or not the Commission considered  
3 it a safety hazard in which case they could require  
4 the conditions of the new code to be enforced.

5       Q.     Okay. Okay. So besides which code was in  
6 effect, the complainant described it as a rainy day  
7 in winter -- I don't remember which month -- could  
8 that explain the sag below the 12 feet?

9       A.     No. I believe the only reason the wires  
10 would sag lower than what would be considered normal  
11 would be either a leaning pole or a load heating up  
12 the wire. There were two lines to consider, the  
13 secondary line and the primary line, and the load on  
14 the primary line was, regardless of how much load  
15 would be on the secondary line, the load on the  
16 primary line in my opinion would not cause a sag to  
17 the effect to cause it to sag below the NESC minimum  
18 requirements just because of the number of  
19 transformers supplied by it. It could not supply  
20 enough load to do that.

21       Q.     For the primary?

22       A.     (Witness nodded head.)

1 Q. Did you see the picture with the leaning  
2 pole?

3 A. I did.

4 Q. Is there code dealing with leaning poles?

5 A. The limitations of the code are that the  
6 condition of the facilities are such to perform  
7 adequately, so it would be a judgment call as to how  
8 far the pole would have to lean before it was no  
9 longer better performing correctly.

10 JUDGE HAYNES: Okay. Is there any further cross  
11 of this witness?

12 MR. BOURKLAND: I have questions for this  
13 witness.

14 JUDGE HAYNES: Okay.

15 CROSS EXAMINATION

16 BY

17 MR. BOURKLAND:

18 Q. Mr. Rockrohr, were you made aware that in  
19 April of 2006 a complaint was filed against the  
20 utility because the secondary lines were at 10 feet,  
21 4 inches?

22 A. I read that, yes.

1 Q. And were you aware that when the second  
2 complaint was filed that these lines are 11 feet,  
3 4 inches after being raised to 12, 1?

4 A. Again, I read that.

5 Q. In the NESC handbook I read all conductors  
6 at the largest final sag condition per Rule 232(a)  
7 that's interpreted to be even under excessive  
8 electrical load, such as air conditioning or  
9 heating, that the line should still stay within the  
10 minimum required clearances?

11 MR. JAVAHERIAN: Could we get --

12 THE WITNESS: If that's the current code, then I  
13 agree with your statement.

14 MR. BOURKLAND: Q. 2007.

15 A. Yes.

16 Q. Under the current conditions would you feel  
17 comfortable with a son, or daughter, or wife riding  
18 a horse under those lines?

19 MR. JAVAHERIAN: Objection, your Honor. He's  
20 not a horse expert or an expert as far as --

21 JUDGE HAYNES: Perhaps he could rephrase the  
22 question in his professional opinion.



1 MR. BOURKLAND: Q. The question is would you  
2 feel comfortable --

3 MR. JAVAHERIAN: Your Honor --

4 JUDGE HAYNES: Okay. I'm curious as to your  
5 opinion if this is an unsafe condition.

6 THE WITNESS: It's my opinion that the conductors  
7 that are in the field today do not satisfy the  
8 National Electric Safety Code today. I do not know  
9 whether that makes that an unsafe condition in that  
10 location with the information that I have to work  
11 with. It's my belief that any lines that do not  
12 meet the National Electric Safety Code need to be  
13 modified to meet that code.

14 JUDGE HAYNES: Okay. Thank you.

15 MR. BOURKLAND: No further questions.

16 MR. BOURKLAND: Q. Typically in construction work  
17 when any kind of corrections are made is typical  
18 that structure be brought up to current code and in  
19 the case here where this line is twisted --

20 MR. JAVAHERIAN: Objection, your Honor. I'm not  
21 sure where the foundation for that question comes  
22 from.

1 JUDGE HAYNES: I have to agree, so specific to  
2 this.

3 MR. BOURKLAND: Q. The wish here is to  
4 grandfather unsafe conditions.

5 MR. JAVAHERIAN: Objection, your Honor. That's a  
6 statement.

7 JUDGE HAYNES: I think you're mischaracterizing  
8 the witness' testimony.

9 MR. BOURKLAND: Q. In your opinion, would you  
10 consider the maintenance work that's been done here  
11 a requisite for improving the safety of this  
12 installation for the work that's been done in the  
13 past and it's apparent that its elevations are  
14 unlikely to be maintained in the future?

15 JUDGE HAYNES: Are you talking about  
16 tree-trimming work or raising the line?

17 MR. BOURKLAND: I'm talking about the line  
18 elevation.

19 JUDGE HAYNES: Okay.

20 MR. BOURKLAND: Q. Inasmuch as this line has  
21 been out of compliance twice, we have a utility pole  
22 that's listing at 8 1/2 degrees, and increasing with

1 time, what is the likelihood that they can maintain  
2 a grandfather elevation?

3 A. I can't answer that. I don't know what the  
4 likelihood that they could maintain a grandfather  
5 elevation would be.

6 JUDGE HAYNES: Mr. Rockrohr, have you been to the  
7 site?

8 THE WITNESS: No.

9 JUDGE HAYNES: So if that pole keeps leaning,  
10 based on what you heard here today, would that line  
11 keep falling?

12 THE WITNESS: It would tend to reason that it  
13 would.

14 MR. GOLDSTEIN: I can say for the record, Judge,  
15 that if Mr. Rockrohr would allow us -- I'm sorry  
16 --Mr. Bourkland allows us on the property, we'll  
17 straighten the pole.

18 JUDGE HAYNES: Okay.

19 MR. BOURKLAND: That's interesting because  
20 numerous requests have been made in the past 17  
21 years to do just that without a response.

22 JUDGE HAYNES: I'll include that in whatever

1 order I write in this matter that the company has  
2 agreed to straighten that pole.

3 MR. GOLDSTEIN: I would point out in response to  
4 Mr. Bourkland's comments that we asked them for a  
5 copy of all his exhibits. The pole in question,  
6 Pole No. 3, with the lean was not part of what he  
7 provided us and I am unaware that he's ever made any  
8 kind of statement that this pole was leaning to  
9 whatever degree it is.

10 MR. BOURKLAND: May I respond?

11 JUDGE HAYNES: Sure.

12 MR. BOURKLAND: In 2002 we invited their  
13 engineering crew to the site and it was so noted  
14 that the condition of that utility pole.

15 MR. GOLDSTEIN: Then I assume, Judge, that  
16 Mr. Bourkland will allow the crew to go out there  
17 and straighten the pole.

18 MR. BOURKLAND: I'll do that with an appropriate  
19 appointment. I have further questions of  
20 Mr. Rockrohr.

21 JUDGE HAYNES: Go ahead.

22 MR. BOURKLAND: Q. In your professional opinion,

1 is it your feeling that Com Ed should correct the  
2 height of that pole?

3 JUDGE HAYNES: I think that's been asked and  
4 answered.

5 MR. BOURKLAND: I have no further questions.

6 JUDGE HAYNES: Any redirect?

7 MR. JAVAHERIAN: Could we have just one minute.

8 JUDGE HAYNES: Sure.

9 MR. GOLDSTEIN: I have a question or two, Judge,  
10 based upon further cross-examination of the witness.

11 JUDGE HAYNES: Hold on.

12 RE CROSS EXAMINATION

13 BY

14 MR. GOLDSTEIN:

15 Q. As I understood your --

16 MR. JAVAHERIAN Hold on.

17 JUDGE HAYNES: He wants more cross.

18 MR. JAVAHERIAN: That's fine.

19 MR. GOLDSTEIN: Q. As I understood your direct  
20 testimony, Mr. Rockrohr, you stated that based upon  
21 your assumptions that you were applying the old NESC  
22 code rather than the current code and saying that

1 there was a certain grandfathering under the old  
2 code with respect to the height of the primary and  
3 secondary lines of Mr. Bourkland's property; is that  
4 correct?

5 A. More accurately, I think I stated that the  
6 Commission's rules provided for grandfathering.

7 Q. Now if Com Ed were to bring all of its  
8 primary and secondary lines into compliance with the  
9 current NESC provisions, as adopted by this  
10 Commission, would it not cost literally billions of  
11 dollars to do so?

12 A. At Mr. Bourkland's property?

13 Q. Just in general.

14 A. Do you mean system-wide?

15 Q. System-wide, yes.

16 A. I don't know.

17 Q. Do you think it would cost just a few  
18 thousand or many thousands?

19 A. I would have to find out how many places  
20 circumstances exist. I couldn't even fathom a  
21 guess.

22 MR. BOURKLAND: I have one further question --

1 MR. GOLDSTEIN: Nothing else.

2 MR. BOURKLAND: -- for Mr. Rockrohr.

3 JUDGE HAYNES: Sure.

4 RECROSS EXAMINATION

5 BY

6 MR. BOURKLAND:

7 Q. How many people do you think might have to  
8 die before the grandfathering is addressed?

9 MR. JAVAHERIAN: Your Honor, I believe that  
10 that's a question for the legislature and for the  
11 Commission itself and not the staff.

12 JUDGE HAYNES: I agree. That's beyond the  
13 questions presented here of this witness in this  
14 proceeding. Okay. Redirect?

15 MR. JAVAHERIAN: One minute, please.

16 JUDGE HAYNES: Sure.

17 (A brief pause.)

18 MR. JAVAHERIAN: Just one question.

19 REDIRECT EXAMINATION

20 BY

21 MR. JAVAHERIAN:

22 Q. Mr. Rockrohr, Mr. Goldstein asked you to

1 characterize your testimony as saying that your  
2 testimony states that the primary and secondary  
3 lines are grandfathered in at the appropriate  
4 heights currently or at the time of your testimony  
5 and you answered yes to that. Would you like to  
6 adjust that in regard to what your testimony says  
7 about the primary line?

8 A. Yes. At the time of my testimony I didn't  
9 have any information about the height of the primary  
10 lines, so, yes, Mr. Goldstein addressed the  
11 secondary line only.

12 MR. JAVAHERIAN: Thank you. That's all.

13 JUDGE HAYNES: Okay. Thank you, Mr. Rockrohr.

14 Mr. Bourkland, would you like to  
15 provide any additional testimony based on what you  
16 have heard here today?

17 MR. BOURKLAND: I would like to address my  
18 concluding remarks. It's the time for that?

19 JUDGE HAYNES: Okay. Well, at certain points  
20 during the cross-examination of witnesses, you  
21 indicated you wanted to make statements pertaining  
22 to what you heard from witnesses. This would be



1 your opportunity to do that, but if you want to  
2 proceed to closing statement, actually the company  
3 would go first if you are interested in making a  
4 closing statement.

5 MR. GOLDSTEIN: The company would not go first.  
6 The complainant would. The plaintiff goes first,  
7 respondent second, then he can do some kind of  
8 rebuttal I guess to whatever I say.

9 JUDGE HAYNES: Yes.

10 Did you want to offer more testimony at  
11 all?

12 MR. BOURKLAND: No.

13 JUDGE HAYNES: Okay. Go ahead and make your  
14 closing statement.

15 CLOSING ARGUMENT

16 BY

17 MR. BOURKLAND:

18 Relevant to horses in the area, from  
19 the saddle of a typical riding horse, I would be  
20 capable of reaching like this (indicating), a height  
21 of 10 feet, and I'm 5 feet, 10-inches tall, and this  
22 doesn't take into account a mature horse or a large

1 person. A standing position in stirrups it's  
2 possible without stretching to reach 10 1/2 feet, so  
3 the essence of this complaint is not strictly a  
4 technical item, but, simply put, we follow the  
5 recommendations that Com Ed gave us years ago about  
6 what types of vegetation, species, growth height, et  
7 cetera, needed to be installed to restore the area  
8 that they so heavily damaged and unnecessarily.

9                   Cutting trees off at the surface is  
10 something they don't normally do without written  
11 permission, and I have presented here that common  
12 sense would say an elevation of 16 feet is in the  
13 best interest of safety. The lowest costs and least  
14 labor-intensive minimally impasse (sic) solution to  
15 mitigating this safety hazard would be to install  
16 additional transformers appropriately sized at Poles  
17 1 and 3.

18                   As indicated on Exhibit A, this choice  
19 of mitigation would completely eliminate the need  
20 for any overhead secondary utility lines subsequent  
21 raising of those lines if they continue to sag  
22 negating all future damage to the vegetation

1 restored agreed to by the parties in 1990, and it  
2 would certainly be appreciated if Com Ed would honor  
3 the agreements they made at that time, but Com Ed  
4 has taken the position in the past that damage being  
5 done is that of their subcontractor and not of their  
6 responsibility.

7                   It is Com Ed who hires, fires, and  
8 issues directions to its subcontractors. It is,  
9 therefore, the party holding the responsibility for  
10 past actions. The expense for complying with  
11 construction safety standards is not the  
12 responsibility of -- it is not the responsibility of  
13 any of their subcontractors, line clearing or  
14 otherwise, but is the responsibility in their  
15 service area of Commonwealth Edison.

16                   It is hereby pleaded (sic) by the  
17 complainant that this court rule in favor of the  
18 complainant and be further assured that this court  
19 -- by this court that mitigation be carried out  
20 without any attempt at hostile compliance.

21                   Never at any time in the past has this  
22 party requested or sought any punitive damages, only

1 the restoration and preservation of what once  
2 existed here before that storm in the summer of  
3 1990, virtually inactive glut (inaudible) occurred,  
4 34-inch oak trees lose their branches and loss of  
5 energy on that line since the days of Abraham  
6 Lincoln and still in existence at the time Com Ed  
7 installed their lines and equipment through this  
8 area in 1972. Until today, its failure shows no  
9 sign of help (sic). How can it be construed that my  
10 doing or anybody's responsible seems to me  
11 unconscionable.

12                   Additionally, it's my request that no  
13 reprisals of employees or pensioners of Commonwealth  
14 Edison at the direction of management be conducted  
15 to conduct unethical practices. Thank you, your  
16 Honor. I now rest.

17       JUDGE HAYNES: Mr. Goldstein, did you want to  
18 enter a statement.

19       MR. JAVAHERIAN: Staff has no statement to make,  
20 your Honor.

21       JUDGE HAYNES: Mr. Goldstein.

22       MR. GOLDSTEIN: Yes, I have a closing statement.

1 CLOSING ARGUMENT

2 BY

3 MR. GOLDSTEIN:

4 First of all, Mr. Bourkland has  
5 provided no evidence there's any horses on his  
6 property. The uses of horses does not seem to be  
7 really an issue in this matter. There is no safety  
8 hazard that's been shown with respect to  
9 Mr. Bourkland's property. Mr. Bourkland's solution,  
10 as testified to by Mr. Adams, creates not only more  
11 problems with respect to his solution but at a far  
12 greater cost than Mr. Bourkland testified to.

13 The position of Com Edison Company with  
14 respect to elevating the lines, both the secondary  
15 and the primary, has been since day one of this  
16 proceeding that if Mr. Bourkland as cost causer  
17 provides funds to elevate the lines, Com Ed will pay  
18 to elevate the lines. This does not include the  
19 Pole 3 that has been shown to be leaning.

20 As I noted previously, we have not --  
21 we were never provided a copy of this photograph of  
22 the pole. We'll be glad to fix the lean on the pole

1 and as quickly as possible given weather conditions  
2 this winter.

3 I would also note that these lines  
4 predate the 1990 changes the NESC adopted by this  
5 Commission and as noted in Mr. Rockrohr's testimony  
6 and as generally discussed throughout the testimony  
7 in this proceeding to Mr. Rockrohr.

8 The Commission has to follow whatever  
9 the NESC code said with respect to either lines and  
10 the ambient temperature and conductors and all the  
11 rest of the stuff that is contained in the code  
12 prior to 1990 that's applicable to this proceeding.

13 And, finally, if, in fact, and I think  
14 this is where Mr. Bourkland has been heading all  
15 along with this proceeding, that if we were to  
16 change the primary and secondary lines and elevate  
17 them at our cost, which is really what he's  
18 proposing in this proceeding, we would have to do  
19 that for all of the property owners in his area,  
20 such as his witness today, and the cost would be  
21 absolutely prohibitive.

22 Finally, with respect to the safety

1 issue, as far as we're aware, and there hasn't been  
2 really any testimony on this that since the lines  
3 weren't finally installed until 1972 and to-date  
4 we're unaware of any accidents that have occurred  
5 either on Mr. Bourkland's property or adjoining  
6 property with respect to the height of the lines.

7 JUDGE HAYNES: Would you like to make a follow-up  
8 statement?

9 MR. BOURKLAND: Yes.

10 REBUTTAL

11 BY

12 MR. BOURKLAND:

13 Because an accident has not happened  
14 there yet, and I don't have any statistics for other  
15 parcels, particularly outside of Miller (sic)  
16 subdivision, is it going to take a fatal accident or  
17 even a minor shock to a rider on a horse that sends  
18 the horse out of control and results in injury  
19 before action will be taken or are we going to see  
20 another Titanic?

21 JUDGE HAYNES: There is no witness to question at  
22 this time, so this is your closing statement.

1 MR. BOURKLAND: I rest.

2 JUDGE HAYNES: Okay. How are -- how does staff  
3 or the company intend to present the information on  
4 the co-part? Are you going to make a filing?  
5 There was some discussion about which co-part was  
6 applicable.

7 MR. JAVAHERIAN: Staff would be happy to do  
8 post-hearing briefs discussing the issue and give  
9 legal analyses.

10 JUDGE HAYNES: Okay. You can set a schedule for  
11 briefing.

12 Mr. Bourkland, did you want to file a  
13 brief in this matter? We generally don't have  
14 briefs in pro se complaints just, so that --

15 MR. JAVAHERIAN: Habit, your Honor.

16 JUDGE HAYNES: Yes. Did you plan to file a  
17 brief, Mr. Bourkland?

18 MR. BOURKLAND: Not being knowledgeable of all  
19 the legal possibilities, could you elaborate what  
20 that is?

21 JUDGE HAYNES: Well, it's covered by our rules of  
22 practice and I don't think I can give you advice on



1 what you would include in a brief and I don't -- you  
2 know, I almost wonder if maybe this could be  
3 addressed by just a filing, a filing with maybe  
4 perhaps updating Mr. Rockrohr's testimony about what  
5 the code says rather than briefing this.

6 MR. JAVAHERIAN: My only concern with that is  
7 that then we'd be inviting cross of Mr. Rockrohr's  
8 testimony as opposed to having this fought out on  
9 paper only unless everybody would be -- I know I  
10 don't think there would be an issue with possibly  
11 rebuttal testimony then but then we have got --

12 JUDGE HAYNES: You know what, let's not go there.  
13 We could just brief it. It's fine.

14 MR. GOLDSTEIN: Are we just going to brief the  
15 issue of which NESC code is applicable under  
16 Commission rules and so on and so forth?

17 JUDGE HAYNES: That's a good way to do it. We  
18 can just limit the brief to that as opposed to the  
19 whole.

20 MR. JAVAHERIAN: That's what staff is proposing.  
21 We don't feel that a briefing of the entire issue is  
22 necessary unless you feel that it is.

1 JUDGE HAYNES: No. Is that acceptable to you,  
2 Mr. Bourkland, just a legal brief arguing what  
3 statute applies?  
4 MR. BOURKLAND: I have no objection to that.  
5 JUDGE HAYNES: Okay.  
6 MR. BOURKLAND: I'm very much aware of what  
7 statutes apply.  
8 JUDGE HAYNES: And what co-part applies. I'm  
9 sorry I misspoke. And then there would be no brief  
10 on the whole proceedings, just that one issue, and  
11 you understand that?  
12 MR. BOURKLAND: Yes.  
13 JUDGE HAYNES: Okay. Okay. How long would  
14 parties like for that brief?  
15 MR. JAVAHERIAN: I would say my current schedule,  
16 your Honor, I would appreciate at least -- at least  
17 three weeks. I would offer maybe the week of  
18 February 4th, perhaps say the 7th.  
19 MR. GOLDSTEIN: That's three weeks.  
20 JUDGE HAYNES: That's three weeks from today.  
21 MR. BOURKLAND: And my request would be 30 days  
22 from today. Is that possible?

1 JUDGE HAYNES: You could do February 14.

2 MR. JAVAHERIAN: That's fine with me, your Honor.

3 JUDGE HAYNES: Four weeks. So that would be

4 initial briefs will be due February 14, just

5 addressing that one issue and how about two weeks

6 for reply briefs?

7 MR. JAVAHERIAN: Certainly.

8 JUDGE HAYNES: Which would be February 28.

9 Is there anything else that should be

10 discussed?

11 MR. JAVAHERIAN: Your Honor, just to be clear,

12 we're addressing whether the sag component of

13 Mr. Adams' testimony is responded to also by

14 Mr. Rockrohr is pertinent to this case or are we

15 addressing the entire --

16 JUDGE HAYNES: I think --

17 MR. JAVAHERIAN: -- adoption of NESC by the

18 Commission and at what time?

19 JUDGE HAYNES: As far as I'm concerned, the only

20 question that's outstanding that isn't clear for me

21 is from the testimony is whether there is that

22 18-inch --

1 MR. JAVAHERIAN: Variance.

2 JUDGE HAYNES: -- variance allowed under that

3 grandfather code.

4 MR. JAVAHERIAN: That's all we're briefing, your

5 Honor.

6 JUDGE HAYNES: Okay.

7 MR. GOLDSTEIN: We were discussing the secondary

8 line 18-inch sag variance whether that's applicable

9 or not.

10 JUDGE HAYNES: Yes, and I think that's correct

11 because the way I understood the testimony was that

12 the 11-foot, 4 inches was fine because of the

13 18-inch variance that's my --

14 MR. GOLDSTEIN: That's our position with respect

15 to the secondary line, correct.

16 MR. JAVAHERIAN: We like --

17 JUDGE HAYNES: Just the secondary line.

18 MR. JAVAHERIAN: I'm informed that we prefer to

19 address it in regard to both lines to make sure that

20 there is no question about whether the variance

21 should only affect the secondary line or if there's

22 any issues with the primary line.

1 JUDGE HAYNES: That's fine. If parties would  
2 like to address these -- both these points.

3 MR. BOURKLAND: These lines variances have  
4 all --

5 MR. GOLDSTEIN: That's what the briefing would be  
6 for. You'll be able to make your argument as to  
7 whether what you believe the Commission should apply  
8 as the standard.

9 JUDGE HAYNES: Anything else anybody wants to  
10 add?

11 MR. GOLDSTEIN: We have to make copies --  
12 official copies.

13 JUDGE HAYNES: We'll get the copies done. Okay.  
14 Then the record is marked heard and taken. Thank  
15 you.

16 MR. JAVAHERIAN: Thank you.

17 HEARD AND TAKEN.

18

19

20

21

22